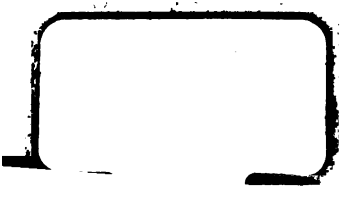
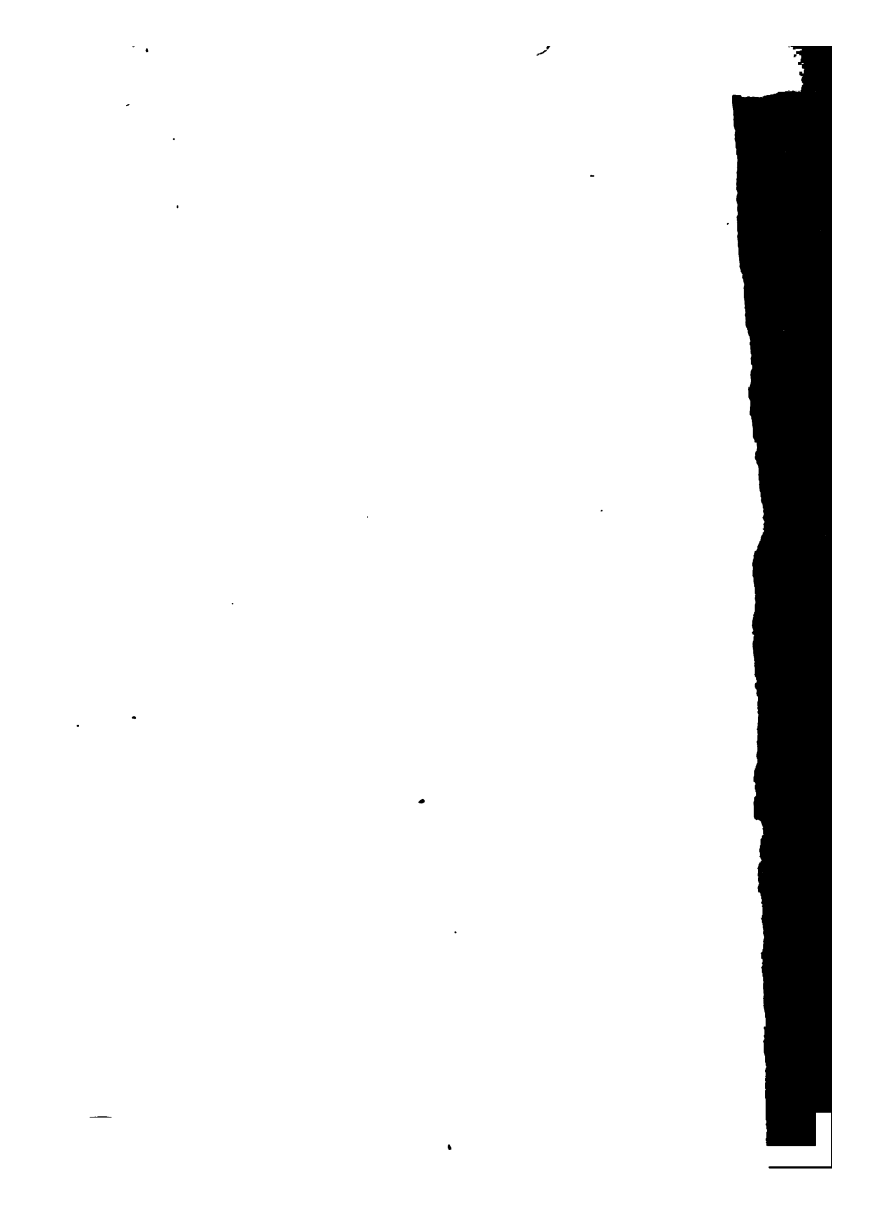




The Powers, Duties and Work of Game Wardens

POWERS, DUTIES AND WORK

. . . OF . . .

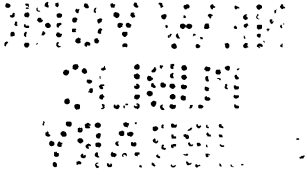
GAME WARDENS

A HANDBOOK OF
PRACTICAL INFORMATION FOR OFFICERS
AND OTHERS INTERESTED IN THE
ENFORCEMENT OF

FISH AND GAME LAWS

WRITTEN AND COMPILED BY
HARRY CHASE,
County Warden of Bennington, Vt.

THE TUTTLE COMPANY
Printers and Binders
RUTLAND, VT.



Preface.

This little volume was prepared by the writer and compiler after ten years' experience in the field as a game warden, during which time he made hundreds of investigations of violations of the game and fish laws. There was scarcely a week passed during this period that he did not feel the need of just such a reference book as this. Questions were constantly arising which, could he have had a little handbook containing the information herein set forth, could have been easily answered. As we knew of no such volume being on the market at the present day we were tempted to undertake the work, believing that it may be of some assistance to officers and others interested in the enforcement of fish and game laws. In compiling the law it was found necessary to use the statutes of a given state, and, of course, the author used the Public Statutes of Vermont, as Vermont was the state in which most of his experience had been acquired. At the present day, however, in a general way, the statutes of the different states are very similar on matters of fish and game, so that this volume may be of some value in all parts of the country. In each particular case the reader will do well to con-

sult the statutes of his own state before settling any question in his own mind. It is presumed that the reader is familiar with the fish and game laws of his state before attempting to make use of this work. With the earnest hope that this little book may be of some value in a general way to the great cause of fish and game protection we now submit it to the public.

HARRY CHASE.

Bennington, Vermont, Nov. 26, 1910.

Introduction by the Author.

All over this country to-day those who are really conversant with the conditions as they now exist plainly see and know that there is a growing scarcity of game and fish, or in other words, the wild creatures of forest, field and stream are on the decrease, and in such alarming fashion that unless stringent measures are taken at once the next, and perhaps the present, generation will see the last of them. We realize that there are many who decry this statement, and even laugh in contempt at such a prophecy, but we saw the same thing during this generation when the buffalo and passenger pigeon were to be seen in countless numbers throughout the country, and yet where are these creatures now? Again, why is it that these same people who think the game and fish are not growing scarcer are constantly demanding of their state commissions that the latter put forth more effort to restock their game covers and their fishing waters? There is no question but what these good people see the impending fate of their fish and game, yet they are so selfish they do not want their own pleasures curtailed for the benefit of the future. That is the real truth of the matter. This being true, it behooves the unselfish advocates of this grand cause

to get together and work in harmony in the interests of true game and fish protection.

The first question is, What can be done in a practical way to bring about this desired end? It is now fully understood by all sane advocates of this cause that two things will bring about this result, namely, the enactment of sane, simple and scientific laws, and a strict and rigid enforcement of the same. First, we need laws framed by unselfish men who have made a scientific study of the conditions, and then we must have these laws enforced by equally unselfish men who are in sympathy with the cause, and who possess sufficient courage and intelligence to do their work honestly and thoroughly. That is fish and game protection in a nut-shell. And now we have to consider first the legislation. By decisions of the leading courts throughout the country, it is now settled that it is within the police power of the states to enact such legislation, but it should be distinctly understood in advance by the lawmakers that they possess this power for the sole and single purpose of preserving and protecting the fish and game, and if they enact laws for political purposes to please their selfish constituents, and such enactments are conducive to the extermination of the fish or game, these solons are traitors to their oath of office. The courts cannot review the legislative discretion as to what

measures are suitable for the preservation of fish and game, therefore, the blame for poor laws must rest entirely upon those who make them. And it is a lamentable fact that in many of our legislatures the game laws are framed by men who are not aware of this duty to the people; who care nothing about the game and fish, only desiring to please their constituents in this respect, and who are wholly lacking in knowledge of the subject upon which they propose to legislate. How can ordinary men have correct knowledge of this question? It is one of the great causes of the day in this country and men are devoting the best years of their life in studying it from a practical and scientific standpoint. These are the men who should be consulted, and yet it is only too true the opinions of experts are treated with contempt by our modern lawmakers, while those who have some selfish ends to serve are listened to with approval. This situation must be reversed if we are ever to have wholesome laws upon the subject of game and fish protection.

Equally important with good laws is the question of enforcement of the same. No law is a protective measure unless it is enforced rigidly. No fish or game was ever protected by a statute book full of laws, whereas, on the other hand, a considerable amount of protection has been afforded our wild crea-

tures by the active enforcement of even a few wholesome laws. We are decidedly of the opinion that the enforcement of the laws is more important than the laws themselves as conditions now prevail in this country. Occasionally we find, after great care has been taken to enact wise legislation, the enforcement of same is entrusted to men wholly unfit for such a purpose. Is this not all lost effort? Was there ever enacted self-enforcing laws? Do large business concerns entrust their detail work to the hands of unfit employes? Then why does a state use such poor business policy? The work of a game warden who is charged with enforcing the laws in his line is a distinct branch of the business of to-day and the future. It cannot be learned in a day, and it requires special qualifications for one to become successful in the work. To assist in imparting some information on the subject has been the effort of the author and compiler of this little book. The author only aims to give fundamental information on each branch of the work. Full knowledge of the work requires both study and experience and cannot be acquired in any other manner.

(THE AUTHOR).

"The degree of physical and moral courage, good judgment and discretion demanded of a game warden is greater than in any other branch of the public service. A man who can so perform the varied and exacting duties of this position successfully and at the same time create favorable public sentiment toward the work of game and fish protection is a valuable officer, and he who will cheerfully expose himself to the danger, endure the exposure, undergo the hardships and suffer the abuse often heaped upon him for the paltry salaries we are able to pay, is a genuine patriot, and should always have the support and admiration of all good citizens."—CARLOS AVERY, Executive Agent of the Minnesota Game Commission.

The Game Warden of To-Day.

(Extracts from a pamphlet)

By R. W. WILLIAMS, JR.,
Assistant, Biological Survey.

For several hundred years the enforcement of criminal laws of all kinds in this country has been intrusted to sheriffs, constables, and police officers, and until the middle of the nineteenth century this method was considered satisfactory. But with the growing demand for more stringent enactments for the preservation of game and the increasing complexity of statutes for this purpose it was found no longer practicable to include the burden of enforcing them among the duties devolving upon general officers, and their enforcement has consequently been intrusted to special officials, usually called game wardens.

The origin of the term "warden" in relation to game is somewhat obscure, but it was probably adopted in analogy to church and wood wardens in England, where the word first came into use. However, this may be, a game warden is now generally understood to be an officer charged with the enforcement of laws for the protection of game and fish.

THE OFFICE OF GAME WARDEN.

Since the establishment of State officers or departments for the protection of game, the position of warden, whether the jurisdiction extends over the entire State or is confined to a small area, has assumed an importance and dignity it did not formerly possess. Fortified by plenary power to enforce the game laws, and with a consciousness of the important public service performed, the warden of to-day stands upon an equal footing with other executive officers of the Government, and commands like respect.

DUTIES.

The duties of a game warden are those usually performed by a sheriff, but they differ in one important particular, and this difference inheres in the object for which the wardenship was established. A sheriff ordinarily acts only in pursuance of preliminary proceedings by private persons or by a court officer and usually under a warrant issued by a court commanding him to arrest a certain person, summon a jury, or perform similar acts; but a warden cannot await the initiative or detection of a violation by others. He must act, must himself search out violations, find the evidence wherewith to convict offenders, and institute prosecutions. This is one of the primary reasons for the existence of a special officer to enforce the game laws.

It frequently happens that the warden must perform detective duty in order to secure the evidence necessary to convict suspected parties, and this means that occasionally he is subjected to all the dangers of such service.

An officer who realizes the responsibility of his position can do much to bring game protection into popular favor. He may easily become an educator, however circumscribed his field. Much of the wanton destruction of animal life proceeds from thoughtlessness, and few persons once impressed with the importance of preserving wild creatures continue to destroy them.

POWERS.

The powers exercised by the wardens of the present day are very extensive. Indeed, were it not so, enforcement of game laws and the consequent preservation of game would be impossible. It is the exception now for a State to withhold from its game wardens the right to arrest without warrant persons found in the act of violating the law, and a number of States confer upon their wardens the right to search summarily any place where they suspect contraband game to be concealed.

While the warden may be lawfully invested with broad powers, it behooves him to use tact and discre-

tion in exercising them, so as to give no just grounds for complaints of oppression.

PERILS OF THE WARDEN'S POSITION.

The record of fatalities incident to the warden's official life testifies to the perils of the position. Exposure to inclement weather, with attending discomforts, may be reasonably accounted part of the chances a warden assumes when he enters upon the duties of the office; but conditions should not be such as to compel the risk of surrendering his life to the depravity of his fellow-men. Yet such is the fact. Several deputies and other officials have been killed within recent years while in the discharge of their duties.

However, it should be remembered that game laws and game wardens are of comparatively recent origin in the United States, and that only a short time ago the popular idea respecting fish and game was that wherever found they were almost as much the property of the individual citizen as the air we breathe. The creation of a healthy public sentiment everywhere in regard to the protection of game and the enforcement of game laws is only a matter of time, and the wonder is, not that violations of the law, followed by occasional tragedies, occur in remote districts, but that respect for the law is so widespread, cooperation so general, and the cause of bird and game

protection so far advanced in public estimation in so short a time.

CONCLUSION.

It will be seen from the foregoing that game wardenship in this country has reached its present state of efficiency within a comparatively short time. Beginning with the very local moose wardenship in Maine in 1852, the service has been gradually extended in scope and purposes until now there is scarcely a locality in the United States where a game warden is not in service—scarcely a wild bird or animal which does not come under his protection.

This satisfactory condition has not been attained without a struggle. Many obstacles have been placed in the way of progress by an unwilling, because uninstructed, public, and these have been overcome only by the persistence and devotion to duty of those who have occupied the office during the formative period. The game warden of to-day should recognize this obligation to his predecessors and endeavor not only to maintain but to surpass the high standard established by them.

Some of the former antagonism against game laws still persists, and in certain parts of the country the wardenship is yet in an experimental stage; but it may be safely predicted that in the near future every State in the Union will have established its

game department on a footing with its other executive offices. In spite of its growing importance and power, however, the office of game warden is a difficult one to fill, and it is the duty of every good citizen to lend this important public servant every assistance and encouragement in the discharge of his duties.

Criminal Law.

All violations of the fish and game laws of a state are crimes. Wardens who are charged with enforcing these laws are, therefore, dealing with the criminal laws of the state. It follows, then, if the warden is to act intelligently he must at least be familiar with the fundamental principles of our criminal law. He must thoroughly understand what constitutes a crime. Now, a crime has been defined as an act committed or omitted in violation of a public law forbidding or commanding it. Crimes are divided into treason, felonies and misdemeanors. All violations of the game laws are misdemeanors, or the lowest order of crimes. Treason, in general, is disloyalty to one's government. Felonies, at common law, were crimes which involved the forfeiture of the criminal's property. Felony is now largely regulated by statute. The usual test is whether the crime is punishable with death or imprisonment in the state's prison. All other crimes are misdemeanors.

Importance of Distinctions.

The distinction between felonies and misdemeanors is an important one in several ways. In felonies there may be accessories, while in misdemeanors all participants are considered principals. An arrest is often justifiable in felonies where it would not be in case of misdemeanors, and the distinction here may be very important—where, for instance, in a prosecution for murder the respondent claims that he killed the deceased while he was attempting to make an illegal arrest, an illegal arrest being deemed a sufficient provocation to reduce a homicide to manslaughter. Among other distinctions is the fact that on trial for a felony, the respondent must be present throughout the trial, and the jury cannot separate until after verdict, while this is not the case on trial for a misdemeanor.

Incapacity to Commit Crimes.

Parties incapable of committing crimes are, in general, all persons whose wills are either actually, or by presumption of law, incapable of forming the intent to commit a criminal act. Infants under the age of seven are indisputably presumed incapable of committing a crime. Infants at the age of 14 are presumed capable of committing crime. In the case of infants between the ages of seven and fourteen, the

question of their criminal capacity is one of fact, the burden of proving the existence of criminal capacity being upon the prosecution. Now, this matter of children in criminal law usually refers to grave and serious crimes. Where the game laws have been violated by children it is usually the better plan to use common sense and defer the matter of punishment to the child's parents or guardian. The crimial law takes small notice of trifles, and courts resent having their time taken up in disposing of charges against children, unless the offense is a grave one at law.

Others incapable at law are persons of non-sane mind, and in these cases the sanity of a person accused of crime must be proved beyond a reasonable doubt. Though voluntary drunkenness is no excuse, justification, or palliation of a crime, it is yet often to be considered in determining the degree of a crime. An unlawful act arising by accident or chance from a lawful act is not a crime, but all unlawful acts arising by accidents or chance from unlawful acts are regarded as committed with intent and are crimes. If a person commits an unlawful act under a mistake of fact it is not a crime, as if A, intending to kill a thief, shoots one of his own family. Then there are cases of persons committing unlawful acts under compulsion, duress, or inevitable necessity. In none of these cases is the act considered a crime.

Criminal Intent.

In all cases of crimes the criminal intent forms a most important element. Whole volumes might be written on this subject alone, so we will give only a few principles applicable to fish and game cases. In all crimes there must be the intent to do the act committed. Unless the act springs from the will it cannot be a crime. An intent to violate the law is not essential to the commission of a crime,— i. e., ignorance of the law is no excuse. Neither is ignorance of the fact that an act is unlawful. But it is a principle of the criminal law that ordinarily a crime is not committed if the mind of the person doing the act in question is innocent. Hence it is said that every crime, at least at common law, consists of two elements—the criminal act or omission, and the mental element commonly called the criminal intent. But the necessity for a guilty mind or criminal intent does not mean that it is necessary that the person doing the prohibited act be conscious that it is wrong, for, as we have said before, ignorance of the law excuses no one. Thus when the selling of adulterated milk is made a crime, ignorance that the milk sold is below the standard fixed by law is no defense. But there must be the intent to make the sale. In this case the seller must at his peril see that his milk is up to standard. And we have in mind a case where we deemed the crim-

inal intent so lacking that we refused to consider the case an offense. We once came in contact with a man who had several short trout in possession—each of said trout being 5 1-2 inches long. Now, this man had a small measuring stick which he procured from a carpenter who informed him it was six inches in length. The man had measured all his trout by this standard, rightly thinking, of course, that carpenters being skilled in such matters would make no mistake. But it so happened that the carpenter had made a mistake of one half an inch. The man had previously been careful not to violate the law, and was a well-known, law-abiding citizen of the community in which he lived. Did he deserve punishment for his act? The criminal intent was so palpably lacking that we thought not. We admit that he should at his peril have provided himself with means of ascertaining whether or not his fish came up to the standard of length fixed by law, but we took the ground that, whereas, the offense was trifling, and the criminal intent was wholly lacking, and rebutted by the man's actions, the public good would not be served by prosecution in such a case.

Trifling Offenses Not Noticed.

Public policy clearly does not require the state to interfere and punish for an act unless it injures the public to a material extent, and the criminal law,

therefore, does not usually notice trifling offenses. Nor does it notice wrongs which, though of a serious injury to an individual as an individual, do not perceptibly injure or endanger the public at large. Wardens should keep this principle of law in their minds. The law does not notice trifles, and the machinery of state's criminal law should not be put in motion to punish mere technical violations of the game laws. The whole trend of game law legislation is toward more restrictive measures and these statutes are so loaded down with technical details that sometimes the main intent and purpose of the law is forgotten and resort taken to the details to secure a conviction. Nothing can be more contrary to the spirit of American institutions, nor can such prosecutions do more than bring the whole body of our game laws into disrepute with the people. The intent and spirit of the entire system should be consulted and followed in each case. In order to determine with certainty the nature of a crime, we must search for the ingredients in it, and we shall find that a crime is constituted by an overt act done with a guilty intent, or includes a guilty mind, knowledge, or possession, affecting or prejudicing the public.

Construction of Statutes.

The rule is that penal statutes are to be construed strictly against the state, and in favor of the accused

but the words must be given their full meaning, and the courts will not strain the context and look for a meaning which may have the effect of declaring the statute of no effect. The rule of strict construction only applies to that portion of the statute which defines the offense and prescribes the punishment. In construing statutes the intention of the legislature is to be sought and for this purpose the court will consider, not only the act itself, but its preamble, and will also look into similar statutes on the same subject, and particularly into the old law and into the mischief intended to be remedied. All statutes are to construed with reference to the common law, and provisions in derogation of the common law are held strictly.

Joining in Criminal Purpose.

A crime is not always committed by a single individual, but several persons may be concerned in different degrees, some of them by actually doing the deed, others by standing by and abetting it, others by having advised or commanded it, though absent when it is committed, and still others by assisting in the escape of one concerned. Whenever persons join for the purpose of executing a common criminal purpose, each one is the agent of the other as to all acts in furtherance thereof, and each is criminally liable

for such acts of the others. It is otherwise, however, as to acts not in furtherance of the common purpose. This of course does not apply to persons assisting after the act. The distinction between principals and accessories is recognized in felonies only. In case of misdemeanors all those who counsel or abet its commission, and who would be accessories before the fact if the crime were a felony, are treated as principals: while those who assist after the act, and who would be accessories after the fact in case of a felony, are not punished at all for that particular misdemeanor. They may, however, be guilty of other substantive crimes, such as rescue and obstructing or impeding an officer.

PART ONE.

County Wardens' Powers and Authority Defined.

Number 137 of the Acts of the Vermont legislature of 1908 provides as follows:

Sec. 1. County fish and game wardens shall enforce all laws relating to fish, game and birds, and all rules and regulations in relation thereto, arrest all violators thereof and prosecute all offenders against the same; said wardens shall have the same power to serve criminal process against such offenders, and they shall have the same right, as sheriffs to require aid in executing the duties of their office, and they shall have the same power as other informing officers to make and subscribe complaints or informations for violations of this chapter. (Chapter 220 of the Public Statutes of Vermont.) Said wardens shall seize game, fish or birds taken or held in violation of this chapter, and they may arrest, without warrant, on view, in any part of the state, a person found violating any of the provisions of this chapter, and take such person

before a magistrate having jurisdiction in the county where the offense was committed for trial.

ACT INTERPRETED.

It will be seen from the above that county wardens in Vermont have extensive powers with reference to their work, and it was evidently the legislative intent to give them entire control of cases coming within the scope of their authority. But we must consider the matter farther. Now, the office of game warden is an office created by statute in this country, and such officer has only such authority as the statute gives and provides for. The office is not ancient, like that of sheriff or constable or certain other peace officers, who draw considerable part of their authority from the common law, but in each state where the office of game warden exists, his powers are specifically defined. But we will note that in Vermont the county warden has all the powers of the sheriff for serving criminal process and in calling for aid while performing certain specific duties otherwise provided for. These duties are enforcing laws relating to fish, game and birds; that is, that portion of the Public Statutes known as chapter 220 and additions and amendments thereto. In relation to these same laws he has that part of the powers of an informing or prosecuting officer which permits him to make and sign a complaint or information for

any violation thereof. He may arrest on view, that is, when the offense is committed in his presence, without a warrant, in any part of the state. He may arrest with a warrant in any part of the state also, for sheriffs have such authority by statute to serve criminal process. (See Sec. 1418, P. S., which provides as follows: Sheriffs and constables may serve process, either civil or criminal, anywhere within the state, returnable to any court.) But as an informing officer it should be remembered that a county warden's authority only extends to his own county, for it will be noted that the power of town grand jurors is limited to the town in which they reside, and that of a State's attorney is confined to the county for which he acts. These are the regular informing officers of Vermont and their powers are thus defined by statute. Therefore, as it is not otherwise provided by statute in case of county wardens, we must conclude their authority as complaining officers is limited to the county for which they are appointed or within which they reside, whereas their power to arrest is only confined to the limits of the State of Vermont. Unless county wardens are lawyers, however, and members of the bar it is not expected they will attempt to handle their cases before county court or the supreme court. These matters will usually be attended to by the regular state's attorney for the county in

which the case originated. Whenever the state commissioner has authority to make regulations which have the force of law, the county wardens have power to enforce these as well as the statutes. The Vermont commissioner has authority to do this in prohibiting fishing in certain waters after due notice and hearing, under special provisions of the statute. He also may make certain other proper regulations which the wardens should take due notice of and enforce. All wardens are enjoined to act under the direction and supervision of the state commissioner, and they should follow his instructions implicitly, unless, of course some commissioner should attempt to order a warden to do something not within the scope of his authority, in which case the warden would be justified in refusing to obey the order. The warden's duty is to follow the law first and the commissioner's orders afterward. A warden may act at once when he knows the law is violated without any instruction from a commissioner or anyone else, and it is his sworn duty to do so. No commissioner has power to tell a warden whom to prosecute and whom not to prosecute. The law is no respector of persons and the warden is under oath to do equal justice to all men and perform his duties faithfully to the law and to the State, and no warden should forget this. Assuming that the warden is familiar with his authority as provided

by statute, he has other powers which inhere in all public officers by the common law. These we have attempted to describe further throughout this small volume.

Criminal Process.

It will be noted in the foregoing that county wardens in Vermont have the same powers in fish and game cases as sheriffs to serve criminal process. To the layman, the question immediately arises, what is meant in law by "criminal process?" In a general sense legal process has been defined to be "a process issued by virtue of or pursuant to law; something issuing out of a court or from a judge; a writ of any nature; the means of compelling the defendant to appear in court, etc."

The word "writ" is applied exclusively to civil process, while process in criminal cases is denominated "warrant," which signifies the evidence of authority in the officer to arrest a person, make usual search for stolen property, or execute the law as otherwise commanded. Criminal process includes warrant of arrest, warrant of commitment, or mittimus, warrant of execution or sentence, and search-warrant. These are the writs of the criminal law in use at this time which are properly distinguished by the term warrant. A warrant of arrest is the evidence of authority which is issued by a magistrate for the apprehension of one

accused of crime. A warrant of commitment, or mittimus, is the instrument which is issued by the magistrate after the arrest of the accused, and contains the command to the officer to deliver the prisoner to the jailor for safe keeping pending his indictment or trial, or the giving of bail. A warrant of execution or sentence the command to the officer to enforce the judgment of the court. (Alderson on Judicial Writs and Process.)

In all offenses not committed in the presence of those attempting to prevent the offense or capture the offender, it is the usual practice to lay before some magistrate having jurisdiction to issue a warrant, a complaint under oath accusing the party of the commission of some offense, and this complaint should set out the facts with reasonable certainty. A magistrate has no right to issue a warrant in blank or without the oath of some accusing person, and a blank warrant will not protect an officer from the peril he would be under if he assumed to act without warrant. A warrant apparently regular will protect the officer and it is the duty of the accused to respect such apparent authority. (Andrews American Law.)

The mere omission of the magistrate's signature does not render a warrant void. However, the cautious officer will refuse to execute process so defective,

it being of ready correction. The use of the initials "J. P." after the name of the justice issuing the warrant is, it has been held, insufficient, and the warrant will not justify the officer holding the prisoner. It must appear on the face of the warrant that it is founded and was issued on a sufficient oath or affidavit. It has been said that a warrant of arrest need not necessarily set out the offense, although it is usually recited and made a part of it; but the weight of authority is in support of the proposition that the warrant must recite the offense charged; and that if it does not, or discloses facts which negative crime, it is not fair on its face and is invalid. Process fair and regular on its face protects the officer who serves it. The converse is also true. Process which is not fair and regular upon its face does not protect the officer who serves it. The law demands that every warrant of commitment should show certain things on its face, otherwise it will be insufficient to authorize the imprisonment of the accused. A commitment must recite the complaint on which it is founded. It must show on its face a sufficient cause for the imprisonment of the accused. If there be no cause expressed the jailor is not bound to detain the prisoner. A warrant of commitment is irregular in not stating that there was probable cause to believe the prisoner guilty.

The Law of Arrest.

The following, taken from Hawley, on "The Law of Arrest," should be thoroughly understood by every warden before he attempts to make an arrest for any violation of law.

WHAT AN ARREST IS.

By an arrest, is meant the taking of one person into custody by another, so that the person arrested becomes the prisoner of the person making the arrest. The question of whether an arrest has actually been effected, becomes, in many cases, a very important question. If one has been illegally arrested, he may prosecute the person making the arrest criminally, for an illegal assault; or, as is more commonly done, he may bring suit for damages for the false imprisonment. * * * * * A person who has been lawfully arrested is bound to submit himself peaceably, and go quietly with his captor. Should he not do so, but break away, he is guilty of an additional offense, which is known in law as an escape, and for which he may be criminally prosecuted, even though he should escape conviction on the charge for which he is arrested.

Mere words do not constitute an arrest, although manual seizure is not always necessary, there must be that, or its equivalent in some sort of personal

coercion. There is no arrest where a person is not deprived of his liberty. But anything which subjects a person to the actual control or will of another constitutes an arrest and imprisonment, whether it is physical control, locking the door of a room in which the arrested person is found, or a voluntary submission to words of arrest. An officer effects an arrest of a person whom he has authority to arrest, by laying his hand on him for the purpose of arresting him, though he may not succeed in stopping or holding him. (Mere words spoken to one are not an arrest of him; there must be something physical, though it is enough if the party arresting touch the other, "even with the end of his finger." Bish. Crim. Procedure, 157.)

NECESSITY FOR NOTICE OF PURPOSE TO ARREST.

It is the duty of every citizen to submit peaceably to a lawful arrest. But he is under no obligation to submit to an arrest unless he knows, or is notified of the facts which justify his arrest. Therefore, to make an arrest lawful, it is necessary that the person arrested should have notice that he is arrested by lawful authority.

An officer in making an arrest ought usually to make known his purpose and the grounds of his action, although this is not necessary where the person

arrested must have notice from the circumstances of the case that his arrest is lawful. He may have this notice from the person making the arrest being a known officer, or by seeing his uniform or badge of office, or by being arrested while actually committing a breach of the peace or other crime, or by the person making the arrest giving notice of his purpose and the reason for it, or by his being immediately pursued from the scene of his crime.

If the person has actual notice in any way that he is arrested by lawful authority, it is sufficient, and in such case the officer need not exhibit or read his warrant."

ARREST WITHOUT WARRANT.

By different sections of Chapter 220 of the P. S. county or deputy fish and game wardens are empowered and authorized to arrest on view without a warrant (that is, if the offense is committed in their presence) "a person found violating any of the provisions of this chapter." Examples would be: a person found with game or fish in possession in close season; a person found hunting without a license; a person found with more fish or game in possession than the law permits; seen by the warden drawing seine, or using a net, spear, etc.; fishing or attempting to fish in trout waters in close season; having in possession trout less than six inches in length, or black bass less than

ten inches in length, or landlocked salmon or steelhead trout less than twelve inches in length, etc.—all these are cases of "found violating" provisions of chapter 220 of the Public Statutes

AN ATTORNEY-GENERAL'S OPINION.

The following is the full text of an opinion given by Attorney General Fitts of Vermont to Commissioner Thomas in 1908. This opinion covers the power of wardens as they existed in 1908, and are practically the same now, with additions.

Brattleboro, Vt., May 19, 1908.

Hon. H. G. Thomas,

Fish and Game Commissioner, Stowe, Vt.,

Dear Sir:

I have yours of May 18, 1908, enclosing letter from County Warden Chase of Bennington county, and asking my opinion as to the right of the county warden to arrest without a warrant a person supposed to have violated any of the provisions of Chapter 220, P. S., and also asking my opinion as to the right of the warden to search the person and the receptacle carried by the person supposed to have violated the law.

Section 5275 P. S. makes it an offense to catch and retain a trout less than six inches in length or

to have in one's possession such trout. And by the same section the possession of any such fish is made prima facie evidence that the same are taken or caught from the waters of this state.

Section 5271, county or deputy fish wardens "may arrest on view a person found violating a provision of this chapter." The fundamental basis for legislation of this character is upon the principle that fish and game belong to the state and that a private person may take the same only under the regulations made by the state. Therefore, it follows that no one gets any title to the trout less than six inches long for the reason that the state does not permit him to catch and retain such a fish. It is really the property of the state and no person has the right to retain in his possession such fish.

The Supreme Court of this state in the case of Sheets against Atherton, 62 Vt., at page 234 discusses at length the statute which is the antecedent of Sec. 5271 P. S. According to the authority of the case cited it is clear that the warden may arrest without a warrant a person "found violating" any of the provisions of the fish and game law.

The next question is, how much information must the warden have to warrant his making an arrest without a warrant? That rule may be generally stated in this way: That the officer may arrest with-

out warrant wherever he has "reasonable cause to believe" that the person arrested is violating the law. It will be noted that under Section 5271 P. S. the right to arrest is only in case a person is "found violating" a provision of the law. But if a person has in his possession trout less than six inches long he is, all the time he has them in his possession, violating the provisions of 5275 P. S. Therefore, it follows that if the warden has reasonable cause to believe that a person has in his possession a trout less than six inches long he may, under the authority of Sec. 5271, arrest him without a warrant.

The application of this law must be made in view of the nature of the crime itself, and in view of the means of securing evidence showing the commission of crime, for if the warden could not arrest a man personally until he was certain that he had in his possession trout less than six inches long it would practically nullify the law, for anyone breaking the law will naturally conceal his offense. I believe that if the warden, disclosing his office, sees a person under such circumstances as to indicate that the person is in the possession of trout caught in the waters of this state, that is, if he sees him coming from a brook with a fish basket over his shoulder and a fish rod in his hand, he has the right to ask that person to show him the contents of the basket and to show him all the fish

in his possession. I believe that the refusal of such person to show the fish he has, is ground for the warden to reasonably believe that the person has in his possession fish which he has no right to have. It is my opinion, therefore, that if the warden properly discloses his office and asks the person under such circumstances to show his fish, and that person refuses, the warden thereupon has the right to arrest such person without a warrant.

The Supreme Court has never gone quite that far. In fact, the question has not clearly come up, so far as I am able to learn, in just that way, but my deductions from expressions of the court in other cases, lead me to the opinion as above expressed. Now, as to the right to search a person. No officer has any right until that person is in the custody of the law. The warden has no right to put his hands upon a person for the purpose of search; he can only put his hands upon a person to arrest him. When once a person is arrested he is in the custody of the law, and the general principle then applies that a person arrested may be searched. A discussion of these principles is found in 59 Am. state reports at page 228. Therefore, it is my opinion and I advise that the county or deputy fish and game wardens may search a person whom he has placed under arrest; that he cannot search that person until he is placed

under arrest; that he can only arrest in case he has reasonable cause to believe that such person is then violating the law; that the person is violating the law by having in his possession trout less than six inches long; that the possession of such trout is prima facie evidence of guilt; and that the person in possession of such trout taken from the waters of this state, is, all the time he has them in his possession, violating the law, and is liable to arrest at any time he has them in his possession without a warrant; that a proper and reasonable demand by the officer, who first discloses his office, made upon a person who is in a situation to be fairly supposed to have in his possession fish caught from the waters of this state, and the refusal of such person to show such fish in his possession gives the officer reasonable ground to suppose that such person is violating the law.

A case discussing pretty fully the authority of the states in the matter of protecting the fish and game is the case of Geer against Connecticut, 161 U. S. Supreme Court reports at page 119.

C. C. FITTS, Attorney General.

Warden's Powers Interpreted by Supreme Court.

If the officer (game warden) finds the offender in the act of violating the law and he endeavors to

escape by running away, he may be pursued and arrested on fresh and continuous pursuit, and the arrest will be deemed to have been made from the time and place when and where the pursuit began (Sheets v. Atherton, 62 Vt., 229).

Where the officer proceeds first to seize the nets as authorized by statute and then to take the offender, the arrest is lawful, as he must have a reasonable time to perform all the requirements of the law (Id.)

When Must an Officer Exhibit his Warrant?

"Upon this question no inflexible rule can be laid down. The only object to be attained by exhibiting a warrant is that the person arrested may know that he is arrested upon legal grounds by lawful authority. It has been seen that if he knows this from any source, or from any reason, he has all the knowledge that he is entitled to before being brought before a magistrate, when he will be called upon to answer to the formal legal accusation. In cases where a person may lawfully be arrested without a warrant it is clear that an officer is not bound to exhibit any warrant. In cases of misdemeanors (all violations of the game laws are misdemeanors) where an arrest cannot lawfully be made without a warrant (this includes all cases except where the offense is committed in the warden's presence) the law requires the officer to

have the warrant in his possession at the time that he makes the arrest. In such cases, it is the duty of the officer to exhibit his warrant before making the arrest, if he can do so without thereby losing his prisoner. The officer, on demand, is bound to exhibit his warrant as soon as he can safely; that is, without incurring the risk of allowing the person sought to be arrested to escape. If, when it is perfectly clear that he can safely permit an examination of his warrant, he should refuse to do so, the person sought to be arrested would undoubtedly be justified in resisting arrest. But the right of the person arrested to see the warrant must, in all cases, be considered subordinate to the right and duty of the officer to make the arrest.

UNNECESSARY SEVERITY.

In making an arrest, it is the duty of an officer to avoid unnecessary harshness or violence. If no resistance be offered, or attempt at escape, he has no right to rudely and with violence seize and collar his prisoner.

USING HANDCUFFS.

It would seem that an officer has no right to use handcuffs, unless, without them, there is danger of the prisoner's escape. But the officer has a right to use his discretion as to the necessity for using handcuffs or other means to prevent an escape, and is only liable for a clear abuse of this discretion.

WARRANT PROTECTION TO THE OFFICER.

A warrant in due form issued by competent authority is a complete justification and protection to an officer making an arrest.

MUST SEE THAT HIS WARRANT IS LEGAL.

An officer to whom a warrant is delivered for service must take notice of its contents, and see that upon its face it appears to have been issued by a magistrate having jurisdiction of the subject-matter, upon legal cause shown, for a person who is named or particularly described.

RIGHT TO USE FORCE.

An officer armed with a lawful warrant, or in making a lawful arrest without a warrant, has the right, and it is his duty, to use every necessary means to make the arrest. If resisted, he may use such force as is necessary to overcome the resistance, even to the taking of life. In such a case, if the person resisting is killed by the officer it is justifiable homicide; if the officer is killed, it is murder.

RIGHT TO BREAK DOORS.

In order to execute a criminal warrant, an officer has the right to break open the outer and inner doors of a house to effect an arrest. And the officer is justified, even though it should turn out that the

person sought is not in the house at the time, for the officer has the right to search there. In all cases, where an officer has once lawfully made an arrest, if the offender escapes and takes refuge in his own or another house, the officer is justified in breaking doors to retake him.

ADMITTANCE MUST FIRST BE DEMANDED.

But it would seem that the officer should first demand admittance, and explain the purpose of his entry. And an officer who has reasonable cause to believe that the person named in the warrant is in the dwelling house of another, has a right to search for him there, and, after demand of admittance and notice of his purpose, to break open doors if necessary. And it makes no difference with the officer's justification whether the person was actually in the house or not, or whether the warrant was for felony or misdemeanor.

RIGHT TO SEARCH THE PERSON ARRESTED.

An officer has the right to search the person arrested for certain purposes. He has a right to search for dangerous weapons which the person arrested may have about his person, and the possession of which might assist an escape. He has a right to search him for things whose possession is unlawful (fish or game taken contrary to law, short trout, short

bass, etc.) or which may afford evidence upon the trial of the offender, and such things the officer may lawfully take into his own possession and keep so long as is necessary to answer the purpose for which they were taken. But he has no right to keep from the person arrested money or valuables or papers which are not charged to have been stolen, and which do not furnish evidence against the prisoner.

AFTER ARREST THE PRISONER MUST BE TAKEN BEFORE A MAGISTRATE WITHOUT UNREASONABLE DELAY.

Upon this point there is no difference in law between arrests with or without a warrant. Every warrant commands the officer to have or bring his prisoner before the magistrate who issued it, to be dealt with according to law. In cases where the law authorizes an arrest without a warrant, the duty of the person making the arrest is the same. He must bring his prisoner as soon as he reasonably can before a magistrate who has authority to hear complaints and issue warrants for the offense of which the prisoner is accused. If he delays this unreasonably he becomes a trespasser, and is guilty of false imprisonment, even though the original arrest was lawful. But if a person is intoxicated when arrested he need not be brought before a magistrate until he gets sober, even though a magistrate is sitting at the time of the arrest. No

inflexible rule can be laid down as to what is a reasonable time. This must depend on the circumstances of the particular case, the accessibility of the magistrate, the time of the arrest, the facilities of travel, the condition of the prisoner's health, the state of the weather, etc.

CONFINEMENT OF A PRISONER.

In cases of arrest at night, or on Sunday or other holiday, and in many other cases, it becomes necessary for an officer to confine his prisoner temporarily until he can bring him before a magistrate. In such a case he may confine him in any safe and suitable place which is most convenient. Ordinarily he ought to take him to the county jail, and the keeper of the jail is bound to receive him, even in cases of arrest without a warrant. But the custody of a prisoner in case of an arrest without a warrant being the custody of the officer, and not by the order of a court, he has a right to use his own discretion within reasonable limits.

Justice's Jurisdiction.

Section 5353.—Justices shall have concurrent jurisdiction with the county court of offenses under this chapter to the extent of fining the respondent twenty dollars, and costs shall be taxed against the respondent (Public Statutes of Vermont).

NOTE.—Justices also have concurrent jurisdiction with county court in other cases especially provided for. Note these cases before a prosecution. In all cases where the minimum fine would be more than twenty dollars (except special cases mentioned) a justice cannot try and determine the case—he can only bind over to county court.

PLACE OF TRIAL

Section 2246.—Prosecutions of a criminal nature before a justice, within his jurisdiction to try and determine, shall be tried in the town where the offense is committed or the respondent resides.

WAIVING THIS RIGHT.

If the respondent consents to waive this right (have it written on back of complaint and signed by respondent) or fails to object in seasonable time, then the justice may proceed with the trial to judgment.

"Where a party was prosecuted before a justice for an offense committed in a town other than the place of trial or where the respondent resided, and this appeared in the complaint, and he raised no objection thereto until after the close of the opening argument for the prosecution,—HELD—that the objection was waived, and that the justice acted properly in proceeding with the trial to judgment (State v. Maeder, 47 Vt., 78; 52 Vt., 381).

TO CONFER JURISDICTION ON JUSTICE.

A formal and pending complaint is required to confer jurisdiction. Without it a justice cannot take jurisdiction of an offense, even though the respondent plead guilty thereto. (State v. Wakefield, 60 Vt., 618),

HOW JUSTICE LOSES JURISDICTION.

If a criminal complaint before a justice is "held open" for more than three months without adjournment of further action, the justice thereby loses jurisdiction and can render no valid judgment therein (State v. Bruce, 68 Vt., 183).

STATUTE OF LIMITATIONS.

(Sec. 2351 P. S.) If the penalty is given in whole or in part to the state, county or town, or to the treasury thereof, an action therefor shall be commenced by or in behalf of the state, county or town, within two years after the commission of the offense, and not after.

NOTE.—This applies to all violations of the fish and game laws, except fishing in streams stocked by the commissioner and closed for not exceeding three years. In such cases the prosecution must be commenced within six months after the offense has been committed.

PROBABLE CAUSE.

Sometimes a warden may be in doubt as to whether he is justified in starting a prosecution against an accused person. If, from all the evidence he has, after due and careful investigation, he thinks there is reasonable and probable cause to believe the accused guilty he would be justified in causing his arrest and prosecution. What is "probable cause?"

"Probable cause is such a state of facts and circumstances as would induce a reasonable, prudent and conscientious man to believe the party guilty of the offense charged" (31 Vt., 189; 44 Vt., 124). Probable cause has also been defined more fully in this way: "A person making a criminal accusation may act upon appearances, and if the apparent facts are such that a discreet and prudent person would be led to the belief that a crime had been committed by the person charged, he will be justified, although it turns out that he was deceived and the party accused was innocent. But a groundless suspicion, unwarranted by the conduct of the accused, or by facts known to the accuser, when the accusation is made, will not exempt the latter from liability to an innocent person for damages for causing his arrest. A man has no right to put the criminal law in motion against another, and deprive him of his liberty, upon a mere

conjecture that he has been guilty of a crime" (Carl v. Ayres, 53 N. Y. (8 Sick.) 14).

AN ATTEMPT.

It will be noted in the game laws in many instances "a person who violates or attempts to violate" a certain provision is guilty of an offense. In other words, in these specific cases, one is equally guilty who attempts to violate the law with one who has actually and fully committed the offense. To fully understand this we should understand what is meant in law by "an attempt" or a "criminal attempt." By the statutes of this state (see Sec. 5980, P. S.) in all these cases (game laws) not otherwise provided for one is liable to a penalty of one-half the fine in case of an attempt to violate the law. "An attempt is an intent to do a particular criminal thing, with an act toward it falling short of the thing intended" (Bishop, Crim. Law §728).

"While the law does not punish a mere intent to commit a crime, it does punish certain acts done in pursuance thereof, though they may not amount to the actual commission of the crime intended. There is a marked distinction between 'attempt' and 'intent.' The former conveys the idea of physical effort to accomplish an act; the latter, the state of mind with which an act is done or contemplated. To con-

stitute an attempt there must be an act done in pursuance of an intent, and more or less directly tending to the commission of the crime. In general, the act must be inexplicable as a lawful act, and must be more than mere preparation" (Clark's Crim. Law, p. 127).

"When an act is by legislation made criminal, an unsuccessful attempt to do it, carried far enough to attract the law's notice, is an indictable misdemeanor, not under the statute, but at the common law" (Bishop's Crim. Law, § 237 (2)).

"An attempt is an overt act. It differs from the attempted crime in this, that the act has failed to bring about the result which would have given it the character of the principal crime" (Holmes' Common Law, p. 65).

Making a Complaint.

The following in brief from "Vermont Justice and Public Officer" will be of value to county wardens, as they are authorized by statute to make complaints and act as informing officers in the line of their duties in enforcing the game laws:

CONTENTS OF COMPLAINTS.

"A formal charge of crime in writing, by whatever name known, should state all the facts and circumstances necessary to set forth the commission of

the offense, so that it may preserve the constitutional right of the accused to demand the cause and nature of his accusation." It should state every such fact, clearly, directly and positively, not equivocally nor doubtfully; should state it as a fact, and not as an inference, conclusion, nor belief; and in such detail as to bring it within the rules of legal certainty to the degree required. Especially, every material traversable fact must be directly alleged as occurring at some precise time and place, as "at Montpelier, in the county of Washington, on the second day of October, A. D. 1900." It will not answer to say "on or about." When a particular time and place have once been mentioned, however, it is enough afterwards in the same sentence to refer to them as "then and there."

DETAILS OF CRIMINAL PROCEDURE.

The usual steps in criminal procedure before a justice are: (1) the filing of the complaint; (2) the issuing of a warrant thereon; (3) the arrest of the respondent on the warrant; (4) bringing him before the justice for trial or examination; (5) arraignment; (6) trial; (7) verdict or decision; (8) judgment; (9) sentence; (10) issuing a mittimus; (11) commitment to the place of confinement. In a court of inquiry (8) will be holding to bail or discharge; and

if bail is given (9) and (10) will be recognizance of the respondent and of the witnesses. So, too, if an appeal is taken from the judgment of guilty in a cause within the jurisdiction of a justice. When proceedings are adjourned from time to time, as they sometimes are, the taking of temporary bail will form a part of the trial.

COMMENCEMENT OF A COMPLAINT.

A criminal complaint, after its formal parts, commences by alleging the respondent's name and residence, with the place and date of the criminal act. The name of the accused should be stated accurately, his Christian name and surname being given, and should be repeated in every separate charge of material fact. If his true name is uncertain, it may be stated as ——— alias (or otherwise called) ———, etc. If his true name is unknown, he should be called by some name, usually the name he has given or by which he may usually be called, but if no such name is known, then by some fictitious name, stating that his true name is unknown to the prosecutor. His true place of residence, if known, should be given, and if not, he may be alleged as of any convenient place, usually in the county where the crime was committed. The place and date of the crime should be stated with certainty and definiteness; the place should be

the true place, but the date need only be a possible date within the period of the statute of limitations.

DESCRIPTION OF THE CRIMINAL ACT.

Facts, and not law nor evidence, should make up the substance of the body of a criminal accusation. The acts and intents, which make up the statement of a crime, must be set forth with reasonable certainty and particularity as to time, place and circumstances.

USE OF STATUTORY LANGUAGE.

The exact words of the statute used in describing the crime, need not always be used in charging such crime, but other strictly equivalent words may be used. Great care must, however, be taken that the other words so used are exactly equivalent, for words of a different meaning do not describe the crime. Especially is this true when two or more statutory crimes (all game law violations are statutory crimes) of similar nature but having different penalties, exist, each being described by its own appropriate words, which have different meanings. In charging the commission of a statutory crime, the statute must be followed strictly, and every constituent element of the offense, as described in the statute, must be alleged in the accusation. Usually an accusation for an offense created by statute should follow the words of the statute. If every fact necessary to constitute the

statutory offense is charged or is necessarily implied in following the language of the statute, an accusation for a statutory crime in the words of the statute is sufficient (nearly always true of offenses against the game laws). If there are details or methods of committing the crime; if the crime may be committed in a variety of ways (such as hunting, shooting, pursuing, taking or killing a wild deer, etc.), then the complaint should specify in what way, by what means, or by what instrument the crime was committed.

FORMS FOR COMPLAINTS.

The following blank forms may be filled out and used in the cases of violations therein described:

FORM FOR COMPLAINT AND WARRANT FOR KILLING DEER.

State of Vermont, } To.....a Justice of the
..... County, ss. } Peace in and for the county of ....., comes ....., County Fish and Game Warden, within and for the county aforesaid in his own proper person and on his oath of office complains:

That ..... of ..... in the County of ....., in the state of ....., at ....., in the County of ....., in the State of Vermont, on the .... day of ....., A. D. 19.., said day not being in the open season for hunting deer in the State of Vermont, as by law provided, with force and arms

did pursue, take and kill a wild deer (have in his possession a wild deer, a part of a wild deer) taken and killed (by him) in the State of Vermont on a day not being in said open season for hunting deer, then and there being contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State.

.....
County Fish and Game Warden.

The foregoing complaint was exhibited to me this .... day of ....., A. D. 19...
..... Justice of the Peace.

STATE OF VERMONT, } *To any Sheriff, Constable, or Fish and*
..... County, ss. } *Game Warden in the State, . GREETING:*

By the Authority of the State of Vermont, You are hereby commanded to apprehend the body of the said ..... and him..... safely keep, so that you have him forthwith before the subscriber at ....., that he may answer to the foregoing complaint and be further dealt with according to law.

Given under my hand at ..... aforesaid, this ....day of ..... A. D. 19...
.....Justice of the Peace.

(NOTE.—Cross out portions of complaint not applicable to case.)

ANGLING ONLY.

with force and arms did unlawfully take and catch .....brook trout in and from the waters of this state, to wit, ... brook in the town and county aforesaid, and did not then and there take and catch said brook trout by angling, as by law provided, but by means of a snare (net, spear, etc.), then and there being contrary, etc.

FOUND WITH NET, SPEAR, ETC.

with force and arms was then and there found on the waters (shores) of ..... pond, so called, in the town and county aforesaid, having then and there in his possession (under his control) a net, fish trap, spear, jack, jack-light, (a certain device, to wit, a snare) (set line) with intent then and there to use the same contrary to law for the capture of fish, then and there being contrary, etc.

LIMIT OF CATCH.

with force and arms did unlawfully take, kill and catch in one day more than ———— brook trout, to wit, on the day and date aforesaid, the said .... did then and there take, kill and catch ..... of said brook trout, then and there, etc.

OR

with force and arms did unlawfully have in his possession at one time more than ——— brook trout, to wit, on the day and date aforesaid the said ..... did then and there have in his possession at one time ..... of said brook trout, then and there being, etc., etc.

FISHING IN CLOSE SEASON.

(First Count)

with force and arms did unlawfully fish and attempt to fish in and from the waters of this state; to wit, the waters of ..... in said town of ....., and county of ..... aforesaid, said waters being then and there inhabited by (brook, brown, etc.) trout and said day and date aforesaid being then in and during the close season, as by law provided; then and there being contrary, etc., etc.

(Second Count)

and the said ....., County Fish and Game Warden aforesaid, upon his oath aforesaid, further complains and charges that the said..... on the .... day of ..... A. D. 1909, at ....., in the county of ....., did then and there have in his possession ..... said (brook, brown, etc.) trout, the same being then and there taken and caught in and from the waters aforesaid (or of....., in

the town and county aforesaid), then and there being contrary, etc., etc., etc.

HUNTING WITHOUT LICENSE.

with force and arms did unlawfully hunt, shoot, pursue, take and kill ..... and did unlawfully use a gun for hunting the same (hunt, shoot, kill and transport ..... and did unlawfully use a gun for hunting in this state) without at such time having first procured (and on his person) a license authorizing him then and there to hunt, shoot, pursue, take and kill any of the wild animals, wild fowl or birds of this state and use a gun for hunting the same (hunt, shoot, kill or transport any game birds or wild animals, and use a gun for hunting in this state); then and there being contrary, etc.

GAME BIRDS.

Said day being between the 15th day of November and the 15th day of September, with force and arms did unlawfully take and kill (have in his possession) ..... ruffed grouse, commonly called partridge. (or woodcock) then and there being contrary, etc. (with force and arms did unlawfully take and kill ..... ruffed grouse, commonly called partridge, (have in his possession ..... ruffed grouse, commonly called partridge, taken and killed) by means of a snare (net or trap), then and there being contrary,

etc., etc. * * * said day being before the 15th day of September, 1911, with force and arms did unlawfully take and kill ..... quail, then and there being contrary, etc., etc.

DOGS CHASING DEER.

then and there being the owner and keeper of a dog of the breed commonly used for hunting deer: to wit, a hound dog (of a variety that are known to follow deer) with force and arms did unlawfully and knowingly permit said dog to run at large in the forest of ..... in said town of ..... and county of ..... aforesaid, said forest being then and there inhabited by deer, then and there being contrary, etc., etc., etc.

SHORT TROUT.

with force and arms did unlawfully have in his possession ..... brook trout, each of said trout being then and there less than six inches in length, and the same having been taken and caught from the waters of this State; to wit, the waters of ..... so called, in said town of ..... in the county of ..... aforesaid, and not immediately returned, with the least possible injury, to the waters aforesaid from which they were taken and caught.

FISHING IN WATERS POSTED BY COMMISSIONER.

with force and arms did unlawfully fish and attempt

to fish in and from the waters of ..... (Cold Spring Brook, so called)—in said town of ..... and county of ..... aforesaid, said brook being then and there a stream in which the State Fish and Game Commissioner has placed fish and has prohibited fishing therein for a period of three years from the (15th day of May, A. D. 1909) by posting notices to that effect upon the banks thereof and by publishing such notices three weeks successively in a newspaper (to wit, the Bennington Banner) published in the county aforesaid where such waters are located, as by law provided, then and there being contrary, etc.

FORM FOR OFFICER'S RETURNS.

STATE OF VERMONT, } At ..... in said
..... County, ss. } County, on this .... day of ....., A. D. 19.., by virtue of this warrant I arrested the body of the within named ....., read the same in his hearing and have him now in court as therein commanded .....

.....

.....

Attest .....

Fish and Game Warden.

FEES—

Miles Travel, $.....
Arrest .....
Attendance, ...
Assistance .....
Keeping, ...

$.....

Taking Bail and Appeals.

Releasing on bail is simply the substitution of a private person, presumably a friend of the prisoner, for the officer as the prisoner's keeper. The surety is said to have the principal "upon a string," and may draw him in at pleasure. At any rate he is entitled to a bail-piece and warrant, the latter available throughout this State, for the arrest of the principal and his delivery to the jailer within the jail. The bail piece is written evidence of that right, which extends into all countries unless limited by local law, for the surety to take the principal wherever he may find him, and bring him back to the place where the charge is pending. Bail in this State is taken by recognizance, the highest degree of contract known to the law, made by appearing personally before a court of record and there acknowledging in open court, or before a judge or clerk, an indebtedness to the treas-

urer of the State, or other proper officer, upon terms which are then reduced to writing and placed on record by the court (Vermont Justice and Public Officer).

It is declared by the constitution of the United States, and those of the different states (including Vermont), that excessive bail shall not be required. The object of requiring bail is to insure the presence of the accused to stand his trial, and the amount of bail required should be such only as to accomplish this object. In applying this test, the circumstances and character of the accused, his means, the probability of his guilt, the nature of the crime charged, and the possible punishment, are all to be considered. Where the punishment is a fine only (as in all fish and game cases) there is nothing to prevent the magistrate from requiring bail in an amount greater than the maximum fine. Indeed, it should be so required. It has been held that a magistrate who has taken insufficient bail cannot direct the re-arrest of the accused for the purpose of increasing it. Unless the statutes provide otherwise, there is no reason why any person who is capable of contracting may not become bail (Clark's Criminal Procedure).

Sec. 2293 of the Public Statutes provides: No appeal shall be allowed in a criminal cause where the respondent is acquitted, or where the respondent

pleads guilty; but a respondent may appeal from a judgment or sentence of a justice against him in all other causes, if the appeal is claimed within two hours after the rendition thereof.

Sec. 2294.—In criminal causes the party appealing shall not be released from custody, unless at the time of the appeal he gives security, by way of recognizance to the state, county, town or village, as the case may be, where the offense is charged to have been committed, if the prosecution is on the complaint of an informing officer; if otherwise, to the prosecutor, conditioned that the appellant will personally appear before the county court, and there prosecute his appeal to effect, and abide the order of court thereon.

* * * * *

Sec. 2305.—When a justice postpones the trial of a criminal cause, or the examination of a person charged with a criminal offense which is bailable, he may take security of said person by way of recognizance to the state, and take recognizance to the state of the witnesses for the prosecution, for their appearance before him, on the day to which the trial or examination is postponed.

A respondent in a criminal case is entitled to an appeal from a justice's judgment, although he omits to procure bail (In re Kennedy, 55 Vt. 1, 64 Vt., 209).

The appeal should be granted if claimed within the two hours, and, if the bail is not entered, the respondent should be held in custody for his appearance at court. For refusal to grant an appeal in such case, the proceeedings were quashed on certiorari, as to one respondent, and another was discharged on habeas corpus (Id.)

From the moment such appeal is taken the justice has no jurisdiction in the premises (Banister v. Wakeman, 64 Vt., 203).

A respondent who has appealed to county court from a justice may enter his appeal on the first day of the term as a matter of right, or he may enter it at any later day during the term if the court in its discretion will permit him. He has a legal right to have the court exercise its discretion, and say whether, under the circumstances, he ought to be allowed to enter the appeal (State v. Newell, 71 Vt., 476.)

Search Warrants.

A search warrant is a warrant requiring the officer to whom it is addressed to search a house, or other place, therein specified, for property therein alleged to have been stolen (fish or game unlawfully taken or held or concealed, etc.) and if the same shall be found upon such search, to bring the goods so found, together with the body of the person occupy-

ing the same, who is named, before the justice or other officer granting the warrant, or some other justice of the peace, or other lawfully authorized officer. It issues on a complaint, made on oath or affirmation, by the suspecting party, and the complainant should aver that the property, etc., has been stolen, etc., and that he has cause to suspect, and does suspect, that it is secreted in the house or place proposed to be searched, which place must be described, and no place other than that described can be searched. Nor can any property other than that described be seized. Like other warrants, it should be signed, and, when required by statute, sealed by the magistrate issuing it. It may be directed to an officer, or, in case of necessity, to a private person. The constitutional provisions respecting search warrants apply only to cases where the search is without the consent of the occupants of the premises, therefor where permission is given to search, either by the occupant or his agent, a search warrant is not necessary (Voorhees on Arrest).

The purposes for which a search warrant will issue are usually fully described by statute. The Public Statutes of Vermont provide as follows for such cases:

Sec. 2315.—A justice may grant a warrant for searching, in the daytime, a dwelling house or other

place where personal property, stolen, embezzled or obtained by false tokens, is suspected to be concealed; and also for searching for counterfeit coin, forged or counterfeit bank bills or notes, forged or counterfeit public or corporate securities, and the tools or materials for such forgery or counterfeiting, gaming implements and apparatus, obscene books, pictures, figures or descriptions, lottery tickets or materials for a lottery, fish or game believed to have been taken contrary to law, or implements or devices for taking fish or game, subject to seizure or unlawfully possessed, where the discovery of such articles, fish or game may tend to convict a person of an offense.

Sec. 2316.—Such search warrant shall not be granted except upon the oath of some creditable person, that he has reason to suspect and does suspect that such articles, fish or game are concealed in the place to be searched.

Sec. 2317.—When satisfactory evidence is adduced to two justices that a person against whom a warrant for a criminal offense has been issued, is secreted, or that property that has been stolen, embezzled, or obtained by false tokens, or any of the articles, fish or game mentioned in the second preceding section are concealed in a particular house or place, when the discovery of such articles, fish or game may tend to convict a person of an offense, they may

issue a warrant for the search of such house or place, in the nighttime.

Sec. 2318.—When the states attorney of a county or a town grand juror of a town in which a search is to be made under the provisions of the three preceding sections, certifies in writing on the warrant that the search ought to be made, the fees for such warrant and the service thereof shall be paid by the state.

FORM FOR SEARCH UNDER THE PUBLIC STATUTES OF VERMONT.

To ....., Esq., a Justice of the Peace within and for the County of ..... come..... of .....in the county of ..... and complaint makes, that on the .... day of ..... A. D., 191..

.....,

.....

.....

fish and game believed to have been taken contrary to law, together with implements and devices for taking fish and game, subject to seizure and unlawfully possessed, are by some person or persons to your complainant as yet unknown concealed, and that the said complainant hath good reasons to suspect and doth suspect that the said fish and game together with such implements and devices for taking fish and game subject to seizure and unlawfully possessed and the dis-

covery of which will tend to convict a person of an offense under the Fish and Game Laws of the State of Vermont are concealed in and about the .....
.....
of ....., situate in the town of ..... in said County of———. Wherefore the complainant prays that a warrant may be issued to search for said fish, game, implements and devices in and about said ....., of the said ..... aforesaid, and if the same be found upon said search, to bring such property before the court and that the said..... be apprehended as the law directs.

....., Complainant

The complainant aforesaid resides in ..... in the County of ..... aforesaid.

On this .... day of ....., A. D. 191.., the said ..... exhibited and made oath to the truth of the forgoing compaint by him subscribed,
Before me,

.....Justice of the Peace.

STATE OF VERMONT } *To any Sheriff or Con-*
..... County, ss. } *stable in the State,*
GREETING:

Whereas ..... of ....., a creditable person in the County of ....., has this day under oath exhibited to me his complaint in writing setting

forth that at ....., in said County, on the ..... day of ....., A. D. 191.....

.....

fish and game believed to have been taken contrary to law, together with implements and devices for taking fish and game, subject to seizure and unlawfully possessed are by some person or persons to your complainant as yet unknown concealed and that the said complainant hath good reason to suspect and doth suspect that the said fish and game together with such implements and devices for taking fish and game subject to seizure and unlawfully possessed and the discovery of which will tend to convict a person of an offense under the Fish and Game Laws of the State of Vermont are concealed in and about the.....

.....

of ....., situate in the town of ..... in said County of ....., and praying for a warrant to search after and secure such fish, game, implements and devices, and so apprehend the felon, that he might be punished according to law:

THEREFORE, by the authority of the State of Vermont, you are hereby commanded to enter in the daytime only, into the said.....

.....

.....

..... of the said ..... in ..... aforesaid,

and there diligently search for said fish, game, implements and devices and if the same or any part thereof shall be found upon such search, that you may bring the fish, game, implements or devices so found, and also the body of the said ..... if he be found within your precinct, forthwith before me, at..... in ..... aforesaid, to be disposed of and dealt with according to law. Hereof fail not, and also to notify the said ..... of the time and place of hearing, and for so doing this is your sufficient warrant. Given under my hand at ..... aforesaid, this .... day of ....., A. D. 191.

..... Justice of the Peace

..... recognized to the defendant in the sum of ten dollars as surety for costs of prosecution, as the law directs.

Before me,

.....Justice of the Peace.

OFFICER'S RETURN ON SEARCH WARRANT.

STATE OF VERMONT.

..... County.

At ..... in said County this ..... day of ....., 191.., by virtue of this warrant I entered upon the premises within described and made diligent search of the fish, game, implements and devices, de-

scribed in this warrant, and I found therein, ...
.....
.....
.....
and I have brought the fish, game, implements and devices so found, and also the body of the said .... and have them in court as herein commanded.

ATTEST:

.....

Taxing Costs Against a Respondent.

NOTE.—Although a fish and game warden connot lawfully receive any fees from a court for an arrest, prosecution or the service of any process in connection with a prosecution for violation of the game laws, yet he should be familiar with the legal fees to be taxed against a respondent and enter all such costs on his returns, the same as other officers. The costs go to the State, and the warden will receive his per diem for his services and his necessary expenses incurred in connection with each case. The costs to be taxed against each respondent should be in accordance with the schedule given below.

PROSECUTING OFFICER'S FEES.

Nol. Pros., waiving examination or plea of guilty $1.50
Trial by Court..... 2.00

Trial by Jury	2.50
Each additional day of continuous attendance to the exclusion of other cases	2.00
.....miles actual travel one way	.10
If more than one case tried at same time, travel per mile one way, each case	.05

.....

MAGISTRATE'S FEES.

Nol. Pros., waiving examination or plea of guilty	$1.50
Trial by Court	2.00
Trial by Jury	2.50
Each additional day of continuous attendance to the exclusion of other cases	2.00
Continuance	.17
Mittimus or Warrant	.34
Recording judgment, if record actually made	.25
Subpoena for witnesses, each name	.06
Recognizance	.17
Venire	.20
Search warrant certified	1.00
Making record and filing copy with clerk in binding up cases	1.00

.....

.....

OFFICER'S FEES, ON WARRANT.

.....miles actual travel in state transporting one prisoner	$ .20
Each additional prisoner	.10
Arrest	.50
.....days attendance upon court	.75
.....days keeping, if kept in jail	.50
If not, sum actually expended not to exceed $3.00 per day.	
Actually expended for reasonable and necessary assistance	
Serving certified search warrant	1.00
.....miles travel	.10
Actually expended for reasonable and necessary assistance	

ON MITTIMUS.

.....miles actual travel transporting prisoner	$ .15
Each additional prisoner	.08
Arresting and reading, each prisoner	.56
Copy mittimus	.50
Keeping: when sentence is to pay fine and costs only, unless respondent waives the 24 hours, 10c. per hour for not more than 24 hours	
.....meals, 25c. each	

Keeping: in other cases, same as on warrant..
Paid Jailor if commitment is to jail..... .34
Actually expended for reasonable and necessary assistance .....
.....
.....

ON VENIRE.

.....miles actual travel..... $ .10
.....readings ..... .06
.....

ON SUBPOENA.

.....miles actual travel..... $ .10
.....readings ..... .06
.....copies, per folio..... .10
.....Juror, each ..... $ .50

Witnesses summoned on behalf of State: Attendance $1.00 per day, travel per mile, 6c.

Legal Evidence.

It is impossible in this brief compilation to give any extended treatise on the law and rules of evidence, but we think that the following taken from various legal authorities will be of assistance to wardens in their investigations of violations of the game laws:

Evidence includes all the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved.

Evidence may be divided into three classes, viz.; direct evidence, circumstantial evidence, and presumptive evidence.

Direct evidence is that means of proof which tends to show the existence of a fact, without the intervention of any other fact, as when A testifies that he saw B strike C. Circumstantial evidence is that means of proof which tends to prove a disputed fact, by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact which is sought to be proved does exist. Thus, if the tracks of a horse are found in the snow, this circumstance furnishes grounds for concluding that a horse has at some time passed over the road. Circumstantial evidence is of two kinds, namely, certain and uncertain. Certain circumstantial evidence is such that the fact sought to be established necessarily follows from it; thus, if a body be found with a knife in the heart, the conclusion that death resulted from violence is certain. Uncertain circumstantial evidence is such that the fact sought to be established does not necessarily follow from it; thus, in the case just mentioned, the fact that the man was murdered would

not necessarily follow from the knife's being in his heart.

Presumptive evidence is that means of proof which shows the existence of one fact by proof of the existence of others from which the existence of the first fact may be inferred. There are presumptions of law and presumption of fact.

Prima facie evidence is of that kind which suffices for the proof of a particular fact until contradicted and overcome by other evidence; or which, standing alone and unexplained, would maintain the proposition and in judgment of the law is sufficient to establish the fact, and, if not rebutted, remains sufficient for that purpose.

There are four general rules governing the production of testimony, as follows: 1. The evidence must correspond to the allegations and be confined to the point of issue. 2. It is sufficient if the substance of the issue be proved . 3. The obligation of proving any fact lies upon the party who asserts the affirmative of the issue, *i. e.*, the burden of proof lies upon the party holding the affirmative. 4. The best evidence must be produced.

Hearsay evidence is what one person heard some one else say, and the general rule is that hearsay is inadmissible.

An admission is the voluntary acknowledgment of certain facts. A confession is the voluntary acknowledgment of guilt. Under certain circumstances they are admissable. The chief essential to a valid confession is that it be voluntary. Any threat, or anything in the nature of a threat, invalidates the confession and renders it incompetent. There must be no constraint of any kind. Herein the rule differs from that governing admissions. Admissions made under any legal constraint are good. (Gardner's Review in Law and Equity.)

An officer who, upon his own responsibility makes an arrest without a warrant, is generally called upon to show that an offense was committed which justified him in arresting the offender. To establish the crime he has the burden of proving, beyond a reasonable doubt, all the elements which go to make up the offense, and the mere preponderance of evidence is never sufficient to convict one of a crime, but a greater degree of proof is necessary,—proof that will not allow a reasonable doubt of the prisoner's guilt to remain in the mind of the court or of the jury, as the case may be.

This burden remains with him to the end of the case, for the burden of proof, that is, the fact of the commission of the crime, or the corpus delicti, the identity of the prisoner, and the guilt of the accused

never shifts from the prosecution. While the burden of proof in making out a prima facie case, where a crime is charged, never shifts from the prosecution, yet where the defendant, instead of producing proof to negative the proof adduced by the prosecution, proposes to show another and distinct proposition which avoids the effect of the evidence adduced by the prosecution, there the burden of proof, or rather the burden of giving evidence, does shift, and rests upon the party who proposes to show the latter fact. As where the prisoner endeavors to prove an alibi, that being a new and distinct proposition which, if proved, will avoid the effect of the state's evidence, the burden of proving the alibi rests upon the accused. Yet even there the burden of proof does not shift in a practical sense, for if the prisoner fails to establish the new and distinct proposition which he interposes in his own defense, and which need only be established by a preponderance of the evidence, whatever evidence he does produce to that end must be weighed in the balance, and if upon all the evidence produced by both parties, there remains a reasonable doubt of the prisoner's guilt, he must be acquitted, for the prisoner is always entitled to the benefit of a reasonable doubt.

While it is a well established principle of law that "a man is presumed to be innocent until he is

found guilty'' this presumption has no other effect than casting upon the State the burden of proving the guilt of the accused beyond a reasonable doubt. It has no weight as evidence in the trial, and although it calls for evidence from the State it is not evidence for the accused. The accused starts into a trial with the presumption of innocence in his favor, and it stays with him until it is driven out of the case by testimony. And whenever the evidence shows beyond a reasonable doubt that the crime as charged has been committed, or that a crime exists, then the presumption of innocence disappears from the case.

It is competent evidence against the accused that he was silent when charged with the crime, or that he destroyed evidence of his guilt, or marks of ownership, or that he took to flight, concealment or disguise, or attempted to stifle investigation, or possessed the fruits of his crime or that he attempted to commit the same crime at another time or that there are unexplained suspicious appearances or that he used communicated threats.

A confession made by a party who is so intoxicated as not to understand it is not admissible. A confession of a prisoner is not admissible as evidence unless it was voluntarily made and was not inspired by influence of hope or fear. If the confession was obtained by any promises or threats of someone in

authority over the accused, it is not admissible. If an officer should say to the accused, "You had better tell the truth," or, "You had better tell about it," any confession given by the accused thereafter would be incompetent; because such language would naturally convey to the mind of the accused that he would gain some advantage if he confessed his guilt. On the other hand, if the officer merely asked the prisoner to tell the truth, this would not imply that the officer promised any advantage if he confessed, and a confession resultant therefrom would be admissable. (Voorhees on Arrest.)

Regarding Affidavits.

It occurs many times in the experience of wardens that they desire to get an affidavit from a witness in a case. Occasionally the witness is about to leave the State and it becomes necessary to secure his affidavit in haste before he leaves the jurisdiction of the State, or his testimony, which may be very material to the success of the State's case, will be lost. So a warden should be able to make out an affidavit in due form that will meet the requirements of the law in such matters.

Now, an affidavit is a written declaration under oath by a party before some person who has authority

under the law to administer oaths, made without notice to the adverse party in a case. It is distinguished from a deposition in this respect, the latter can only be taken by giving notice to the adverse party. It does not depend upon the fact whether it is entitled in any cause or in any particular way. Without any caption whatever, it is nevertheless an affidavit.

An affidavit to have authority must be sworn to before an officer. Officer's certificate to an affidavit must show evidence of authority, to make his certificate prima facie evidence of the fact.

A notary public of another state must certify that he has power to administer oaths; it cannot be presumed. If no authority is shown it will be treated as a nullity. When a seal is used certificate is not required. Affidavits sworn to before notaries public in Canada, which give no certificate of their authority to administer oaths in the Dominion of Canada, are void. The officer who administers the oath must have legal and competent authority, or the person taking it before him, however false, cannot be convicted of perjury.

In Vermont, affidavits and oaths may be administered by county clerks, justices of the peace, judges and registers of probate, notaries and masters in chancery, unless otherwise provided by law. A notary need not affix his official seal to a certificate in Ver-

mont, but county clerks may theirs under the seal of the court. Also the party may affirm in this state.

Form for Witness.

State of Vermont }
County of.....} ss.

(Name of party).. of .....in the county of..... and State of .....being duly sworn, doth depose and say, that...(Here give testimony in full detail).. And further this deponent says not.

.....
(Signature of affiant here.)

Subscribed and sworn to before me this.....day of.....A. D. 191....

.....
(Signature of officer and title of his office.)

Use of Depositions in Criminal Cases.

The foregoing in regard to affidavits does not refer to the use of depositions in criminal cases. That is a very different proposition altogether. It is intended to refer to cases where an affidavit is used to assist a warden in his investigations, claims against the State, matters of extradition, and other such instances where the law permits the use of affidavits:

but for use as evidence at a trial a legal deposition is necessary, which complies with all the requirements of the statute in each state. The law requires that the best evidence must always be produced, so that if a witness is within reach of process of the State, that is, if he can be legally subpoenaed, the witness himself must be produced. There are certain exceptions to this rule, however, and these are prescribed by statute. The matter of depositions in Vermont is fully described in "Vermont Justice and Public Officer." from which we quote as follows:

It is often inconvenient or impossible for a witness, whose testimony is desired at some trial, to appear there in person. He may reside more than thirty miles away; may be going out of the state not to return before the trial; may reside outside of the state (the instance in criminal cases when the state can call for his deposition); may be rendered incapable of traveling and appearing in court by reason of age, sickness or other bodily infirmity; may be confined in jail; or he may be a judge of a supreme court, going to perform his official duties outside the county in which he resides, not to return before the time of the trial. In any of these instances, a justice, notary public, master in chancery, judge of probate or register, may take the deposition of a witness or party out of court. The usual procedure is that the party

wishing to take the deposition causes a written notice or citation to be issued, in statutory form, signed by a competent magistrate, and served upon the opposite party pursuant to the statute. Provision is also made for depositions to be taken in other states for use here, and in this state for use elsewhere; as well as for summoning witnesses to appear and give their depositions before our magistrates. A witness in this state may not be compelled to travel more than ten miles to give his deposition. A deposition is the property of the party who takes it until it has been used in court. Though the other party must be notified, except as the statute excuses, and has a right to attend and cross-examine, yet he has no right to see the deposition after it has been sealed up, until it is offered in evidence before the court; which the party who takes it is not bound to do.

Permanently Closing Private Streams Under Sec. 5254 P. S.

By the above provisions of the statute the Commissioner is authorized upon agreement with the landowners to permanently close private streams. Sec. 5255 provides that the Commissioner "may receive from the proprietors of such streams in the name of the State, such deeds and writings as are necessary to carry into effect this and the preceding section." To

make this statute effective it is necessary that the Commissioner have a regular deed in due form of law, which must be signed, sealed, witnessed, and delivered to be valid. Below we give the proper form for the transfer of these rights to the State of Vermont.

Form for Deed to Riparian Owner's Fishing Rights.

KNOW ALL MEN BY THESE PRESENTS.

We, the undersigned,.....
.....
of....., in the county of ..... and the state of Vermont, in consideration of the closing of a certain stream running upon and through lands owned by us in said town of ..... by the Fish and Game Commissioner of the State of Vermont under and by virtue of provisions of Chapter 220 of the Public Statutes of Vermont and in consideration of One Dollar, do hereby lease, let and demise unto the State of Vermont all our right, title and interest in and to said brook which is a brook described as follows: (Here put in description of the brook and stating what portion is to be closed.)

All for the purposes and uses set forth and provided in said Chapter 220 of the Public Statutes of

Vermont, all for the term of.....years from the date hereof.

In witness whereof we hereunto set our hands and seals this day of .....191...

.....

.....

Signed, sealed and delivered
in presence of

.....

.....

State of Vermont,
County of.....

At.....of said county, this.....day of.....191..., personally appeared .....

.....

and each severally acknowledged the foregoing instrument by them subscribed and sealed to be their free act and deed.

Before me, ...
Notary Public.

Digest of Some Leading Decisions in Fish and Game Law Cases.

OWNERSHIP AND CONTROL OF FISH AND GAME.

Wild game of a State belongs to the people, in their collective sovereign capacity, and is not the

subject of private ownership, except in so far as the people may elect to make it so, and they may if they see fit, absolutely prohibit the killing of it, or traffic or commerce in it. That its taking, possession and disposition thereof, is the subject of legislative enactment. (Geer v. Connecticut, 161 U. S. 519.)

Game in preserves and fish in private waters are still under the control of the legislature. (People v. Doxtator, 75 Hun. 472.)

A state can prohibit the use of oyster beds in the waters of the state by citizens of other states. That as fish are common property of all the people of the state, a citizen of another state is not invested by the constitution with any right therein. (McCready v. Virginia, 94 U. S. 391.)

Laws enacted for the purpose of regulating the time and appliances for catching fish, are proper exercise of the police power of a state; and, although they may, under certain circumstances, prevent a man from fishing in a stream running through his own land, they do not necessarily amount to taking private property for public use without compensation. (Comth. v. Bender, 7 Pa. C. C. 620.)

Mere pursuit of a wild animal does not give the pursuer any property in it, and, therefore, no action lies against a person for killing and taking a fox, which was pursued by, and in view of the hunter

who found, started and pursued it, and was on the point of seizing it when killed by such other person. (Pierson v. Post, 3 Caines, 175.)

So, a hunter who pursues a deer and wounds it, and follows its track by its blood, until night, when he abandons the pursuit for the night, but resumes it in the morning, has no title to it as against one who killed it the night before. (Buster v. Newkirk, 20 Johns. 75.)

So where a person is engaged in fishing, and has nearly encompassed a quantity of fish with his net, and a third person, by rowing his boat and splashing the water about, frightens the fish so that they escape, no title is acquired to the fish, and no action lies against the wrong-doer for the value of the fish, on the ground that they belong to the owner of the net, or that they were in his possession. (Young v. Hichens, 6 Ad. &E. (N. S.) 606.)

Actual bodily seizure is not indispensable to acquire right to or possession of wild animals; the mortal wounding of such beasts, by one not abandoning his pursuit, may, with the utmost propriety, be deemed possession of him, since thereby the pursuer manifests an unequivocal intention of appropriating the animal to his individual use; has deprived him of his natural liberty, and brought him within his certain control. So, also, encompassing and securing such

animals with nets and toils, or otherwise intercepting them in such a manner as to deprive them of their natural liberty and render escape impossible, may justly be deemed to give possession of them to those persons who have used such means of apprehending them. (Tompkins, J., in Pierson v. Post, 3 Caines 175.)

Each resident of this state has a qualified property in the wild game therein, namely, the constitutional right to hunt and take the same, subject to such regulations as the state, in the exercise of its police power, may impose for the common benefit of all its people; but a non-resident of this state has no property whatever in such game. (State v. Niles, 78 Vt. 266.)

DOGS CHASING DEER.

In a prosecution under No. 130, Acts of 1904 (Sec. 5325, P. S.), it was error to adjudge the respondent guilty, where it appeared that his dog was a beagle hound, a breed that is bred and trained solely to hunt rabbits, and was never known before to hunt, pursue or trail deer. (State v. Zonetti, 80 Vt. 348.)

RUNNING AT LARGE.

Running at large is used in the statute in the sense of strolling without restraint or confinement, or wandering, roving, or rambling at will, unrestrained. * * * But the restraint need not be entirely physical;

it may depend much upon the training, habits and instincts of the animal in the particular case. (Russell v. Cone, 46 Vt. 600.)

The trained hound when pursuing the fox or deer with, and at his master's bidding, is no more strolling without restraint, or wandering, rambling, or roving at will than a boy while going on an errand at his masters' command. (Wright v. Clark, 50 Vt. 130.)

In trespass for shooting a dog claimed by the defendant to have been found "running at large off the premises of the owner or keeper, not having on a collar," etc. (Acts of 1862, No. 10) it appeared that the dog was a hound kept for the chase, and was chained when not in pursuit of game; that when shot, the plaintiff, owner of the hound, was out with the hound in pursuit of a fox which he had just driven to cover, out of sight of the plaintiff, but near to S, whom the plaintiff had invited to join in the hunt. HELD, that the dog, when shot, was not "running at large" within the meaning of the statute. (Wright v. Clark, 50 Vt. 130.)

FISHING RIGHTS IN NON-BOATABLE WATERS GENERALLY.

The right to take fish from flowing non-boatable waters pertains solely to the owner of the land through which such waters flow; but this right, the same as other rights to the use of such waters, must be exer-

cised with due regard to the like rights of other riparian owners, and is subject to the right and power of the state, as the common owner of all things ferae naturæ, to provide for the preservation and increase of the fish as common property. (State v. Theriault, 70 Vt. 617.)

The term "boatable waters" as used in Chapt. 2, Sec. 40 of the Constitution, which provides that the inhabitants of the state shall have the right of fishing therein, means such as are of "common passage" as highways and not merely boatable in fact. The capability of the river or body of water for the purposes of transportation and commerce is the criterion of its navigability. (New Eng. Trout Club v. Mather, 68 Vt. 338.)

TRESPASS.

A person entering upon unenclosed and uncultivated land for the purpose of hunting wild game does not commit actionable trespass. (Payne v. Gould, 74 Vt. 208.)

Trespass will lie for an entry upon the lands of another, although there is no real damage, since repeated entries might be used as evidence of title. Hence the doctrine de minimis does not apply. (Bragg v. Laraway, 65 Vt. 673.)

In order that land shall be "inclosed" within the meaning of P. S. 5354, it must be surrounded by vis-

ible objects, natural or artifical, and an imaginary boundry is not enough. (Payne v. Gould, 74 Vt. 208.)

P. S. 5354, providing a forfeiture of $10 for wilfully entering upon lands without the permission of the owner, for the purpose of hunting, fishing or trapping, is a remedial and not a penal statute, the forfeiture being treated as damages rather than as a penalty. (Payne v. Sheets, 75 Vt. 335.)

By public usage there is no trespass in taking fish from a small lake nearly surrounded by another's land, unless the land owner has given notice that it will not be allowed. (Marsh v. Colby, 39 Mich. 626.)

TRESPASSING ANIMALS.

If a statute provides that no person shall in any way destroy any mink between specified dates, under a prescribed penalty; and the state constitution declares that all men have certain natural, essential and inherent rights, among which is the right of "protecting property," and an action is brought against a person for killing minks contrary to the statute, it will be a good defense to show that the defendant shot the minks upon his own land while they were chasing his geese, and without showing that the geese were in imminent danger and could not otherwise have been protected. (Aldrich v. Wright, 53 N. H. 398; 16 Am. Rep. 339, where the cases are fully and ably reviewed.)

IS IT LARCENY TO TAKE ANIMALS OUT OF ANOTHER'S TRAP.

We give herewith two conflicting opinions: "It is clear that a larceny may be committed by taking any creatures whatever which are domitæ naturæ, and fit for food, such as ducks, hens, geese, turkeys, or their eggs or young ones. But things of a base nature in contemplation of law, as dogs, cats, bears, foxes, monkeys, ferrets, etc., cannot, by the common law be the subject to larceny; although a man may have a property in them which the law will protect by a civil action. (Norton v. Ladd, 5 N. H. 203; 20 Am. Dec. 573.) The reverse of this opinion seems to have been held in State v. House, 65 N. C. 315; 6 Am. Rep. 744, in which it was said: "An otter is an animal valuable for its fur, and though it be one feræ naturæ, yet, if it be reclaimed, confined or dead, the stealing it from its owner is larceny." In this case Settle, J., said: "We take the true criterion to be the VALUE of the animal, whether for the food of man, for its fur, or otherwise. We know that the otter is an animal very valuable for its fur. * * * * If we are bound absolutely by the English authorities, we should be obliged to hold that most of the animals, so valuable for their fur, are not subject of larceny."

CONSTITUTIONALITY OF STATUTES.

The state has no jurisdiction to grant the right of fishing in private waters or to grant access to waters, whether public or private across the lands of others. This would be taking private property for private use without consent of the owner and without compensation, and so, unconstitutional. (New Eng. Trout Club v. Mather, 68 Vt. 338.)

Laws regulating hunting, fowling and fishing are not in violation of the constitution, unless clearly shown to be so prohibitory as to virtually deprive the inhabitants of the right secured. (State v. Norton, 45 Vt. 258.)

P. S. 5259, which authorizes the fish and game commissioners to prohibit fishing in waters stocked by them, or in specified portions thereof, for a period not exceeding three years, by posting and advertising as therein provided, is not unconstitutional as being a taking of a right belonging to the owner of the land contrary to Art. 2, Chapt. 1, of the Constitution, but is a valid regulation of his use of that right under Chapt. 2, Sec. 40, and a valid exercise of the police power under Art. 5, Chapt. 1. (State v. Theriault, 70 Vt. 617.)

When the fish and game commissioners have stocked a pond or stream with fish and prohibited fishing therein for three years, and the three years

have elapsed, their power in respect to such waters is not exhausted, but they may restock it and again prohibit fishing therein when necessary to effect the purposes contemplated by the statute. (State v. Edredge, 71 Vt. 374.)

DEER WITH HORNS.

In a prosecution for illegally killing a deer it is no defense that the respondent was ignorant of the fact that the animal was without horns. (No. 94, Acts of 1896, and No. 108, Acts of 1898.) (State v. Ward, 75 Vt. 438.)

A deer which has no horns protruding through the skin, so that they can be seen to be horns, is not a deer "having horns" within the meaning of the statute. (Id.)

LICENSES.

A state may lawfully impose a license for the privilege of hunting upon citizens of other states, which is not imposed on its own citizens. (In re Eberle, 98 Fed. 295).

Citizens of other states have no property right which entitles them to fish against the will of the state, a fortiori, the alien from whatever country he may come, has none whatever in the waters or the fisheries of the state. Like other privileges he enjoys as an alien, by the permission of the state, he can only

enjoy as much as the state vouchsafes to yield to him as a special privilege. To him it is not a property right, but is in the strictest sense a privilege or favor. (In re Ah Chong, 2 Fed. Rep. 736.)

The state has jurisdiction to regulate and control the fisheries in the waters of the state, both tidal and interior waters. The right to fish in its waters is not a privilege of the citizens in the several states; granting to citizens of this state the right to fish for and take fish in a manner and for a purpose not given to citizens of another state is not unconstitutional. (85 Me. 444.)

The constitution of the United States provides in effect that the citizens of each state shall be entitled to all the privileges and immunities of the citizens in the several states, but the privilege of taking fish or game in a state is not one of these "privileges." In the celebrated case of McCready v. Virginia, 94 U. S. 391, cited above, the question was whether the State of Virginia could prohibit citizens of other states from planting oysters in the Ware River, a stream in that state where the tide ebbs and flows, and the right be granted by the state to its own citizens exclusively. WAITE Ch. J., in answering the question in the affirmative, said: "The right thus granted is not a privilege or immunity of general, but a special citizenship. It does not belong of right to citizens of

all free governments, but only to citizens of Virginia, on account of the peculiar circumstances in which they are placed; they, and they alone, owned the property to be sold or used; and they alone had the power to dispose of it as they saw fit. They owned it, not by virtue of citizenship, merely but of citizenship and domicile united; that is to say, by virtue of a citizenship confined to that particular locality."

Prohibition to sell trout, or to have them for the purpose of sale, does not deprive of property without due process of law, so long as the owner is permitted to eat them or give them away. (State v. Schuman, 36 Oreg. 16, 58 Pac. 661.)

LEGAL STATUS OF DOGS.

Dogs have been considered under the law as belonging to a class, as it were, between animals feræ naturæ, in which until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect. They are not considered as being upon the same plane as horses, cattle and sheep, and other domestic animals, but rather in the category of cats, monkeys, parrots and other similar animals kept for pleasure, etc. Acting then upon the principle that there is but a qualified property in them and that while private interests require that the valuable one shall be protected, public interests

demand that the worthless shall be exterminated and they have from time immemorial been considered as holding their lives at the will of the Legislature, and properly falling within the police power of the several states. Laws for the protection of domestic animals are regarded as having but a limited application to dogs or cats. (Santell v. R. R., 16 U. S. 698.)

PART TWO.

Detective Work of Game Wardens.

The work of a game warden in investigating violations of the laws for the protection of fish and game is, in its chief essentials, nothing but detective work, pure and simple. It is work of criminal investigation, and as such it requires as an absolute qualification upon the part of its exponent a fair knowledge of the principles of our American criminal law and criminal procedure. Without this knowledge a warden is constantly grooping in the dark, and he never knows whether his actions will be sanctioned or condemned when his cases are brought to the attention of the courts where they must inevitably land in the end. This point cannot be too strongly emphasized. No matter how clever and enegertic a warden may be in other ways, if he is ignorant of criminal procedure he will be a failure in course of time. If he works in disregard of the law, his activity is only certain to get him into trouble so much the sooner. Therefore, he must be familiar with the rules of criminal procedure. Conceding now that he has acquired a working knowledge of the law from the

information in that line imparted in this little book, what other qualification is requisite to his success? It must follow that he should possess some slight ability, either natural or acquired, as a detective. No special set of rules have ever been laid down by the great detectives of the world, for the simple reason that no set of rules will apply to all cases. Each case demands its own particular treatment, and only in a very general way can the experienced detective aid us with advice. But there are some essentials that are always necessary to successful detective work. Read what two of the greatest detectives on this continent say as to these requirements. One of these men is the late famous Allan Pinkerton of Chicago, Ill., and the other is John Wilson Murray of Toronto, Can. Mr. Pinkerton says: "Many unthinking people have come to believe that there is something mysterious, wonderful and awful about the detective. All my life, and in every manner in my power, I have endeavored to break down this popular superstition, but it would seem that it could not be done. It is undoubtedly true that the successful detective must be possesesd of faculties fitting him for his peculiar character of work. The detective must possess certain quailfications of prudence, secrecy, inventiveness, persistency, personal courage, and, above all other things, honesty: while he must add to these the same quality of reach-

ing out and becoming possessed of that almost boundless information which will permit of the immediate and effective application of his detective talent in whatever degree that may be possessed. And this is all there is to the very best of detectives."

"If there is mystery attached to his movements, it is simply because secrecy is imperative, and that will never consist in vague hints and meaningless intimations. He must possess a mind which is the equal and if possible, the superior of his antagonist. He must be endowed with a clear, honest and comprehensive understanding, and a force of will and vigor of body necessary to overcome the nature and the disposition of the men with whom he has to contend. Assimilating as far as possible, with the individuals who are destined to feel the force of his authority, and by appearing to know but little, acquire all the information possible to gather from every conceivable source, and in the least curious or inquisitorial manner. Where the detective is found to possess these qualifications, success attends his operations."

John Wilson Murray says: "A good detective must be quick to think, keen to analyze, persistent, resourceful and courageous. But the best detective in the world is a human being, neither half-devil nor half-god, but just a man with the attributes and associations that make him successful in his occupation.

A good memory is a great help; in fact, it is essential to the equipment of a clever detective. As a matter of fact, the detective business is just a plain, ordinary business, like a lawyer's business, a doctor's business, etc. The business is full of vexations. There are times when you know to a certainty the doer of a deed, yet arrest must await until the evidence is in hand. Sometimes the evidence never comes and you see the years go by, with a guilty man enjoying the liberty denied to another, no more guilty, who had not the good fortune to lose some links in the chain of evidence that surrounded him. It is the law of chance."

"I believe in circumstantial evidence. I have found it surer than direct evidence in many, many cases. Where circumstantial evidence and direct evidence unite, of course, the result is most satisfactory. There are those who say that circumstances may combine in a false conclusion. This is far less apt to occur than the falsity of direct evidence given by a witness who lies point blank, and who cannot be contradicted save by a judgment of his falsity through the manner of his lying. Few people are good liars. Many of them make their lies too probable; they outdo truth itself. To detect a liar is a great gift. It is a greater gift to detect the lie. There is no hard and fast rule

for this detection. The ability to do it rests with the man."

Now, to sum up what the best detectives teach us, success in each and every case means the application of common sense rules to that particular case, persistent effort, patience, and a careful attention to details; avoiding no hard work that seems essential to the case, and hanging on with a bull-dog grip until success is achieved or there is positively no hope left. We will take a typical warden case and attempt to illustrate some of the primary rules of the detective business.

The warden is notified that a deer has been killed in a certain section and its carcass has been found. He immediately gains all information possible from his informant and makes inquiries of the party discovering the carcass. In doing this, and, in fact, when making inquiries at any time, he should keep steadily in view Mr. Pinkerton's rule of "appearing to know but little, acquire all the information possible, in the least curious or inquisitorial manner." The importance of this rule in detective work can hardly be over estimated. If the warden begins to question and cross-examine everyone he meets in connection with his work in a sharp and harsh manner as though the party were on the witness stand in court and charged with some offense, he will secure very

little information. On the other hand, if the warden uses tact and diplomacy, and only asks an important question now and then as if in the course of a casual conversation, he is more likely to secure the information he desires. Let this be kept in view at all times.

Assuming that the warden has acted as above suggested, he then gets on the scene of action as quickly as possible. This celerity of movement is necessary so that the officer may have the benefit of any ground clews that may remain about the carcass. Upon arriving at the scene, the warden first attempts to ascertain how the deer was killed. He examines the body carefully and minutely for wounds. If the deer has been shot, and there are no signs of the carcass having been moved, the warden notes where the bullet entered by means of the hair having been driven inwardly. He then notes the direction the deer was standing or running when it fell. Keeping this in mind, he now examines the ground and surrounding country for tracks of the poacher, tracks of the deer to ascertain if it ran after being shot, etc., empty shells, from guns, and any other clews that will lead to the identity of the slayer. In the meantime if he finds the bullet did not go through the deer, but remains in its body, of course he has extracted it. This he will have calipered to discover the calibre of the gun or rifle, and keep as an important exhibit in the case.

If he has found the back track of the poacher (which is often possible if there is snow or much muddy ground in the neighborhood), he will follow this faithfully and unerringly till it leads to a habitation or other destination. When such is found, if a part of the deer carcass was missing, the warden will make all haste to procure a search warrant and search the place before the meat has been consumed. If the process of securing a search warrant requires too much valuable time, then he will attempt to enter the place without such warrant by subterfuge. This can often be done without the officer exceeding his authority. For instance, if he finds the doors or windows open and no one to answer his knock, he may enter. Or he may summon the inmates and request their permission to search the place, and may do so with the occupant's, or his agent's, consent. If he finds any of the deer meat in possession, the warden should arrest the head of the house at once without a warrant. If he does not find a part of the deer in possession, but finds other incriminating evidence which gives a reasonable cause to believe he has found the guilty party, he may arrest them on suspicion then and there.

Now, we will assume none of the above clews have developed, is the warden's case hopeless? Must he give up all hope of apprehending the violator? Not necessarily. He will return to the carcass at the scene

of the killing (or to the scene if he has arranged to have the carcass removed for safe keeping and future evidence), and note about how long the deer has been dead. Then he will commence a systematic inquiry of the neighborhood. He will ask all the natives if they heard any shots at such and such a time. Did they see hunters in that vicinity and when? What sort of a rifle does so-and-so own? If the warden suspects a certain individual, he will inquire: Did you see John Smith (giving the correct name of the party) on such a day? Where was John Doe at such and such a time? What is Richard Roe doing now? Does he hunt much, etc.? All of the inquiries will be made, of course, in a careful, tactful, and circumspect manner, while apparently in the course of a casual meeting and conversation.

Should all of the above efforts prove entirely futile, the warden should not be discouraged. He must study the case from every angle and attempt to form some common-sense theory of just how the crime was committed, and then endeavor to discover evidence that will correspond with this theory. He should keep this case in his mind and as long as it has not outlawed by reason of the statute of limitations, he may be able to take it up and carry it to a successful termination. But the chances are, if the above work has been performed in a careful, painstaking and con-

scientious manner it will bear fruit, although there is often a case, as Mr. Murray says, "when you know to a certainty the doer of a deed, yet arrest must await until the evidence is in hand." Nevertheless, this hard and careful work will aid and develop the warden's power and ability for his future cases.

TRACKING AND TRAILING VIOLATORS.

A most valuable aid to wardens in their work in the woods is a thorough knowledge of the art of tracking and trailing. Some men possess a natural faculty for this work, while others can only acquire it after much study and effort. It can only be learned by experience. If the warden is an experienced still-hunter and has trailed many a bear and deer, he will find that the knowledge thus acquired now stands him well in hand. He will read accurately from the "sign" he sees in the woods just what has happened in his absence, or what is then happening in his immediate vicinity. In other words, what is happening in the woods will be as an open book to him. He should also have a correct knowledge of the ways and methods of poachers and violators, as well as being familiar with the ways, habits, haunts and habitat of the fish and game he seeks to protect. Pursuing a violator whose presence in forest at the same time has been discovered by the warden by means of "sign" is ac-

complished in a similar manner to hunting down a watchful deer or a wary old bear. The warden follows him noiselessly and carefully, but none the less certainly, by the sign he sees as he goes along. He will travel a short distance, then stop, watch and listen. He will observe when the scent is getting hot and will then proceed slower and with more caution until he comes within sight or hearing of his quarry. He will be careful that his presence is not discovered. When he overtakes the poacher thus, the warden will secrete himself and await developments. If nothing unlawful occurs, the warden can silently withdraw from the scene, and if he has been mistaken in his pursuit, no harm is done and no one is the wiser for the move. Now, on the other hand, if the law is violated the warden is a silent witness to the act and prepared to take whatever action he deems best. He can either arrest the offender on the spot or continue his surveillance at close quarters until he secures more evidence, or gets his party where he can call in help, as the case may require.

As in other matters of detective work in the woods, no extended rules can be laid down for trailing in all cases. In each emergency special treatment will be needed. A few general rules, however, may appropriately be kept in mind. It is not necessary to have snow or muddy and soft ground on which to do

good trailing. No animal or human being can wander around in the woods without leaving some "sign" which the observing eye will discover. In dry weather and on stony ground the sign will be faint; nevertheless it is there. Note the dew shaken from the grass and brush in summer, or the small stones turned over or out of place, or the fresh broken twigs under foot, or the bent and twisted boughs in the bush, or the high grass trodden down. All these signs and numerous others may be discovered, when there is no impression made on the ground by footfalls. A human being in the woods is sure to leave gross signs of his presence. If the warden can trail a wary wild animal, he will find it extremely easy to trail such a gross beast as man. If the man is a smoker the warden will occasionally find burned pieces of matches, or tobacco bags or cigarette papers, or the emptied contents of a pipe, and very often by some of these the true identity of the user may be traced. Other signs are also visible from time to time. Sometimes it is an empty cartridge shell where the party has fired his gun, or the paper or wrapper which enclosed the lunch the sportsman was carrying and left where he ate his midday repast, or the entrails of fish or game which have been dressed in the woods, or perhaps the party camped and then we will find plenty of signs to indicate just what occurred in that vicinity. Examine

the remains of the camp fire, the shelter and bed, and dig around the place in every direction. Perhaps an old addressed envelope may be found which will lead to immediate identification of the party, or we may find the remains of a set-line or jack-light if a pond or lake is near, or empty provision cans, papers that held food supplies, etc., etc., or innumerable other small things which will serve as circumstantial evidence in case a violation has been discovered or reported in that vicinity. All these items should be taken care of by the warden for future reference. It should be remembered that all violators aim to conceal their crimes, but usually in the backwoods they become careless about these small things and therein lies the warden's opportunity to take advantage of just such items and outwit the offenders. A warden's whole attention is or should be engaged in discovering poachers and evidence of their work. He is keeping a sharp, constant and attentive lookout for them and always on the alert for their presence in his territory. Therefore, he has the better chance of watching them in concealment, because, as a rule, the poacher is so intent upon the business he has in hand he cannot spare much time in watching for the officer. The result is, the warden has the better chance every time if he is constantly "on his job."

To sum up then, we might say that trailing is an art acquired by experience. It becomes easier and more certain to one who is constantly studying and practicing it. It consists of careful observation of details and the ability to analyze and make a connected story of the "sign" we find from place to place. No item should be too small to escape the observation, and each detail should be a link in our chain of circumstances which will form an intelligent whole. Tracking and trailing is a very necessary qualification for a warden, and he should continually study and practice it if he hopes to be successful in his work. He will make many failures at first, but this should not discourage him, but only cause him to bend his mind to renewed efforts till he masters the art. He will improve by experience and win in the end.

THE WARDEN'S GENERAL MOVEMENTS

Quite often we hear a warden complain that the regular violators in his territory keep so well posted on his general movements and plans from day to day that his success in apprehending them is thus seriously handicapped. This is true in many cases, but usually the warden is inclined to overestimate this obstacle. It is the fate of all wardens, and the really clever ones are only stirred to increased efforts by this difficulty. Naturally enough, if a poacher knows there is

but one warden in his section and to commit an offense in safety depends upon an exact knowledge of that wardens whereabouts, he will try to ascertain that information. No set of poachers on earth can keep a clever warden's movements under observation, if he is determined to baffle them, for the simple reason the odds are all against them and in favor of the warden. It is the general policy of game commissions throughout the country to obviate this difficulty by sending strange wardens into a territory of this kind, where the local warden has complained of such a handicap to his work. This is all right in certain cases and under some conditions, such as working the warden on a certain lake, pond, or stream, or in a well-known piece of woods, but for general work and without local assistance and co-operation the shrewdest warden in the country will be an utter failure. An absolute prerequisite to success, is the warden's familiarity with the country in which he is working. If he can secure the services of a reliable man as a guide, he may do well in strange territory, but he must always risk his guide's being treacherous and betraying him. The reason for this is that very few men wish to betray their friends and neighbors into the hands of the law, even though the compensation for such service seems large to them. Natives of a given community are loath to act as informers against their

neighbors. A warden alone in a strange country is like a fish out of water, until he gets his bearings. Sometimes he can do this by the aid of a government map and a compass, and at other times he will be compelled to go slow and make numerous inquiries before he can proceed. All things being equal, the strange warden is usually more handicapped in his work than the local warden with whom the poachers are so familiar. However, we are not opposing the policy of using strange wardens, but only attempting to show that ordinarily the fault is in the local warden himself and not in his environments, if he is in earnest about his duties and determined to perform them. The poachers may watch him, but owing to his familiarity with the country and his acquaintance with the offenders there are hundreds of ways by which he can outwit them. May he not let it be known that he is going to such and such a place, and then in a circuitous manner return to his old territory? Does he keep his own counsel? Then how can the poachers get any knowledge in advance of his movements? Can he not go out under cover of darkness and return in the same manner? Can he not lay a few traps for the poachers as well as they can? Can he not guard a certain section so faithfully that even though he does not apprehend a poacher, yet he will prevent the commission of their crimes? And if this

is true, is it not even better to prevent a crime than to apprehend the criminal? In short, there is every reason to believe that if a warden is energetic, honest, faithful to his duties, persevering and courageous, he will keep the poachers "a-guessing" and catch the boldest and shrewdest of them in the end in his own territory better than a strange man can do.

EXAMINING WITNESSES AND GETTING INFORMATION.

We have called attention previously to Mr. Pinkerton's rule about securing information in the "least curious and inquisitorial manner." In a general way this refers with force to the warden's work. In most instances the work and duties of game wardens is peculiar as compared to that of other ministerial officers of a state. Sheriffs, constables, and police officers' duties usually end when they have apprehended a criminal, but that of a warden has really just commenced after the arrest is made. Then begins the trying stage for the officer. He drops his role of policeman of the woods, and must now assume the capacity of a prosecuting attorney. He has deprived a person of his liberty; now let him prove in a court of law that the said person has committed a crime, or by what right did he cause such person's arrest? Herein will be shown a warden's fitness, or unfitness. Whether he has used good judgment, is honest and

has a requisite knowledge of what constitutes legal evidence in a court of law, is now to be put to the test in all its glaring possibilities. He may be honest and acting in good faith, but if he is ignorant of his full duties before the eyes of the law, or has used poor judgment, he will be criticised and condemned. He may escape the "axe" this time, but many repetitions of such conduct will not be condoned. So we say it behooves our warden to go slow at first, and feel his way cautiously. But there is no reason on earth for an intelligent warden to hesitate if he is perfectly familiar with his duties as outlined in this book, and has carefully and conscientiously performed them. Let us suppose he has brought in a case on after information, that is, he has investigated the crime after its commission and is relying on outside witnesses to convict the offender, instead of having caught him in the act. Of course, the warden may feel positively certain in his own mind that the party is guilty, but that fact should have no bearing on the matter. The question is, Can he prove his case by competent legal evidence? Mere rumors, conjectures, prejudice and popular opinion should not interfere with a warden's judgment. Facts are what he is after, and such facts as are relevant, material and support his contention.

Very often a warden will have charge of a case where local popular opinion has already apprehended

the offender, tried and convicted him without evidence and is insisting on the warden going ahead in accordance with this view. Here is where the officer must be firm, and refuse to be swayed by clamor. Get the evidence first. Talk to everyone in the locality about the case; learn what evidence is back of this public opinion, and if it is shown the warden is familiar with existing testimony and does not think it will convict the accused, he should refuse to act in spite of the pressure brought to bear upon him. On the other hand, he should be equally firm in prosecuting one against whom he has sufficient evidence, though local public opinion may have acquitted the party. Now, the question is, how can a warden decide in these cases? The first thing for him to do is to personally examine each and every witness. Don't trust this work to someone else. Don't rely upon what So-and-So has heard about the case. Go to these witnesses and examine them in person. Don't be in haste about forming your conclusions, but wait until you have heard all witnesses. Don't rush through your examinations, but conduct them carefully. Then if you are satisfied that you have a good case you can go forward confidently and conscientiously, feeling victory is on your side.

There is considerable to be learned by a warden in regard to examining witnesses, and the weight and

relevancy of their testimony. This is primarily the business of a lawyer, but as we have shown our warden must act as a prosecuting attorney, the quicker he learns this new duty the better will he be equipped for his work. There are many text books on the law of evidence and we suggest that our zealous warden procure Stephen's Digest of Evidence, and master its rules thoroughly. In ascertaining the facts from a given witness, one must sometimes use the art of cross-examination. Mr. Wellman in his book "The Art of Cross-Examination," gives us some very good points, of which we take the liberty of copying a few herewith.

"If all witnesses had the honesty and intelligence to come forward," says Mr. Wellman, "and scrupulously follow the letter as well as the spirit of the oath to tell the truth, the whole truth, and nothing but the truth, there would be no occasion for cross-examination, and the occupation of the cross-examiner would be gone, but as yet no substitute has ever been found for cross-examination as a means of separating truth from falsehood, and of reducing exaggerated statements to their true dimensions. * * * Cross-examination is generally considered to be most difficult branch of the multifarious duties of the advocate. Success in the art comes more often to the happy possessor of a genius for it.

"It requires the greatest ingenuity; a habit of logical thought; clearness of perception in general; infinite patience and self-control; power to read men's minds intuitively, to judge of their characters by their faces, to appreciate their motives; ability to act with force and precision; a masterful knowledge of the subject-matter itself; an extreme caution; and, above all, the instinct to discover the weak point in the witness under examination. * * *

"If the cross-examiner allows the witness to see, by his manner toward him at the start, that he distrusts his integrity, he will straighten himself in the witness chair and mentally defy him at once. If, on the other hand, the counsel's manner is courteous and conciliatory, the witness will soon lose the fear all witnesses have of the cross-examiner, and can almost imperceptibly be induced to enter into a discussion of his testimony in a fair-minded spirit, which, if the cross-examiner is clever, will soon disclose the weak points in the testimony. * * *

"It seldom happens that a witness's entire testimony is false from beginning to end. Perhaps the greater part of it is true, and only the crucial part * * the point, however, on which the whole case may turn is wilfully false. If, at the end of his direct testimony (or statement) we conclude that the witness we have to cross-examine comes under this class, what means

are we to employ to expose him? * * * If the manner of the witness and the wording of his testimony bear all the earmarks of fabrication, it is often useful, as your first question, to ask him to repeat his story. Usually he will repeat it in almost identically the same words as before, showing he has learned it by heart. Of course it is possible, though not probable, that he has done this and is still telling the truth. Try him by taking him to the midde of his story, and from there jump him quickly to the beginning and then to the end of it. If he is speaking by rote rather than from recollection, he will be sure to succumb to this method. He has no facts with which to associate the wording of his story; he can only call it to mind as a whole, and not in detachments. Draw his attention to other facts entirely disassociated with the main story as told by himself. He will be entirely unprepared for these inquiries, and will draw upon his imagination for his answers. Distract his thoughts again to some new part of his main story and then suddenly, when his mind is upon another subject, return to those considerations to which you had first called his attention, and ask him the same questions a second time. He will again fall back upon his imagination and very likely will give a different answer from the first—and you have him in the net. He cannot invent answers as fast as you can invent

questions, and at the same time remember his previous inventions correctly; he will not keep his answers all consistent with one another. He will soon become confused and from that time on, will be at your mercy. * * *

"But suppose you are examining a witness with whom no such climax is possible. Here you will require infinite patience and industry. Try to show that his story is inconsistent with itself, or with other known facts in the case, or with the ordinary experience of mankind. There is a wonderful power in persistence. If you fail in one quarter, abandon it and try something else. There is surely a weak spot somewhere, if the story is perjured. Frame your questions skilfully. Ask them as if you wanted a certain answer, when in reality you desire just the opposite one. Hold your own temper while you lead the witness to lose his, is a golden rule on all such occasions."

The Equipment of the Warden.

The matter of equipment to a regularly employed game warden is an item of no small importance. Usually this will be chosen to suit individual taste and needs, but there are some details in connection with these outfits that cannot be overlooked and are of considerable importance. First comes the matter of

clothing. A warden must have two or three outfits of working clothes for the woods. These should be of the best material and suitable for his purposes. He needs extra suits so he can change daily into dry clothes if the weather is inclement. The warden is exposed to all sorts of weather and it behooves him, if he values his health, to have warm and comfortable clothes in winter, and light and rainproof garments in summer. His clothing should not be of the usual material worn by sportsman, such as canvas, khaki, etc., as these are noisy in the brush and are poor articles to wear in rainy weather. Some old suits of woolen or mackinaw in winter, and light cotton in summer are better.

For weapons, the warden should carry the very best that can be had. He may carry them all his life and never have occasion to use them, while, on the other hand, he may need them very suddenly, and this need may be so urgent that his very life may depend upon the excellence of his gun. In the way of a small arm we recommend the Colts Automatic Pistol, caliber .45, the most powerful, accurate, convenient and safe small arm now on the market. This weapon is powerful enough to kill a grizzly bear and yet is small, so it can be carried on a belt and stowed away in one's hip pocket. If the warden carries hand-

cuffs or other police goods, he should be careful to get only the best and of modern pattern.

As a general practice it is a good thing for two wardens to travel and work in company. Occasionally there are violations committed in such remote and isolated sections of the forest that it is impossible for the officers to reach these places from the settlements. This is more especially true with campers. They get back so far they think they are out of the danger zone. In such cases the wardens will be compelled to camp upon the party's trail. For this purpose one can now secure a small canoe tent of balloon silk, with a ground cloth, that is light, rainproof and comfortable, and will roll into a small pack that can be easily carried on the back. It will accommodate two persons without crowding and make a pleasant and excellent shelter. Then a covered pack basket can be secured which will carry ample provisions and camp needs. One warden can carry the tent and bed, while the other will manage the basket. Thus equipped the two may follow on the trail of poachers who camp. The wardens can stop when their quarry does, and be right on the ground for business when the work of prevention or apprehension is necessary. In some cases this method of working has been found to be the only practicable one to insure success, and wardens should not hesitate to try it.

THE DOG AS AN ASSISTANT TO WARDENS.

One of the most valuable assistants a warden can find in certain instances is a good, companionable dog. For this particular purpose each warden will be compelled to follow his own preferences. Almost any breed of dog will do, except a hound, for this animal is likely to take a trail and go off on a hunting trip of his own and leave his master to his own devices, although cases have been known wherein a hound has rendered valuable aid to the warden. Any intelligent dog is the finest companion one can have in the woods. His keen senses of sight, hearing and smell will warn the warden of approaching dangers quicker than his own can ever do. Nothing escapes a dog's notice or attention when he is in the woods, and some breeds will fight desperately for their masters if the necessity arises. But the greatest aid the writer has found in his dog is the latter's detective ability. If we go near a camp and the remains of a deer are secreted anywhere about the place the dog is sure to find it and dig it up. He will also find the remains of almost any other kind of game that may be hidden in the vicinity. While one is conversing with the occupants of a camp his dog will be extremely busy searching every nook and corner for game or fish, and if there is any such there it is very certain to be brought to his master's attention by his faith-

ful dog, and the latter don't require any special training to render this service, either. It is his nature and instinct to do so. There is also a case where a warden's pointer dog discovered a large shipment of game birds in a box at a railway station. These birds were very cleverly secreted, but they could not escape the fine nose of the pointer and he "made game" as soon as he drew near them, so that his master was able to seize the game and apprehend the culprits. But there are "dogs and dogs." One that runs at will in the woods as though bent on a holiday outing, making a great fuss breaking through the brush, not only betrays his master's presence, but is a detriment to his work and a nuisance, so it is presumed in choosing a dog for an assistant the warden will choose wisely, with his special needs always in view. However, on the whole, we most certainly recommend a dog for assistant game warden.

A WARDEN'S LIBRARY.

Every warden who is interested in his calling should study during his leisure hours to perfect himself in his work. We recommend the following books to be included in his library: Clark's "Criminal Procedure," Harman's "Vermont Justice and Public Officer," a copy of the Statutes of the state in which he resides, "The American Natural History," by W.

T. Hornaday, "American Food and Game Fishes," by Jordan and Evermann, "Birdcraft," by Mabel Osgood Wright, and some competent and authoritative work on fish culture. The warden will find that he has occasion to refer to these books almost daily and he can scarcely get on without them.

Some Odd Sayings by Game Wardens.

"All violators look alike to me!"

"You didn't know it was against the law, eh? That's what they all say. Come along with me."

"I'll be kicked if I do my duty, and I'll be kicked if I don't do it. I'll be damned if I do, and I'll be damned if I don't, so I guess I'll go ahead."

"I've seen carpenters, and surveyors and mechanics who could easily measure lumber and distance correctly with the eye, but it beats all what poor guessers they are when it comes to short fish."

"People always kick on the laws that hit them. People who just hunt are in favor of the fish laws; people who just fish are in favor of the hunting laws, and between the two I don't believe they are in favor of any laws."

"Somebody is always sore on the game warden. If they could only get a blind man for warden, who was deaf and dumb and was crippled in both legs I guess everybody would be satisfied."

"They're always talking about shooting the game wardens, but I haven't had the pleasure of attending any warden's funeral yet."

"Some of these fellows who hang around telling what they'll do to the wardens are the darndest cowards I ever met in the woods."

"You say this trout was six inches long when you caught it? Do we allow for shrinkage? Well, yes, some, but it beats the devil how much they shrink on this stream, 'cause this fish is only four inches long."

"I once met a man who looked me right in the eye and said he never broke the game laws in his life, but his back coat pocket was full of little trout just the same."

"Them fellers that always get so anxious to hunt foxes and rabbits with their rifles and put out their hounds in the deer season have always puzzled me.

They don't seem to care a darn for foxes and rabbits the rest of the year, either."

"I once met a man on Sunday with a rifle stuck down his pants leg and he said he was just out looking over father's bear traps. Funny thing, too; there was lots of deer in that section, but a bear was never known to be seen in that country since Indians were there over two hudred years ago."

"There are men who think it nothing but a joke to break the game laws. I got a fellow right once for killing a deer. He went to court and settled like a man without a kick. After we had soaked him a cool hundred and costs, and I was carting off the carcass, what do you think he says to me? 'Say,' he says, 'I'll give you two dollars for a small piece of that steak.'"

"There's a fellow down my way who has been blowing around that he has been a game warden for twenty years and he never had to arrest a single person in all that time. He's no game warden. He's a joke."

"You want to look out for some of these chaps who are always calling other people fish and game

hogs. If some of them were handy with the gun or rod there wouldn't be any fish or game left in the country where they fish and hunt."

"It was a long time before I got onto just what a game hog was any way, but one day when I ran across a fellow in the woods who had nineteen rabbits and was working for dear life right up until it was nearly dark to get just one more, as he said, then I knew I had come across the simon-pure article at last."

"These people who are always threatening the game wardens had better go a little careful and not talk too loud, for one of these days some warden will hear them and give 'em a hard slap on the wrist."

"Why do some wardens like to be called 'good fellows' anyway? Good fellows never protect the game and fish very much. Their own acquaintances only laugh at them on the quiet, and besides I've often heard it said that Hell is full of good fellows."

"Deers ain't sacred animals by a darned sight. They're only good for food, so them educated fellows tell me. But just the same, I don't like to see a few people do all the eating, and the others only walking around and looking at the deers from a distance."

"Isn't it funny when you find a net or set-line set in the water, nobody in that neighborhood owns it, nor ever knew there was such a contrivance in that section of the country? Once I found a dandy new fish basket right close to a camp full of men. I offiered it to anyone who claimed it. They wouldn't look at it. When I opened it there was four short trout in it."

"There ain't any violators where there ain't any game or fish, 'cause there ain't anything to violate." (This should be a leading maxim with all wardens and their work should be governed accordingly.)

PART THREE—GENERAL INFORMATION.

Trout Propagation.

(Extracts from an article by the late A. Nelson Cheney.)

It is a most difficult matter to determine in advance what conditions exist in all waters that the State is called upon to stock. Streams that were once natural trout streams may have become unfit for trout, through the lack of shade and the drying up of the fountain-head during a part of the season, caused by lumbering operations. A stream well shaded by forest growth may provide water of a temperature for trout, and when the axe has opened the stream to the sun, the temperature of the water may rise to such a degree that trout cannot live in it. Not one applicant in fifty who asks for trout-fry gives the temperature of the water to be planted with any positiveness. A stream that is a roaring torrent in the spring during the melting of the snows, and is afterward a mere thread of warm water, is not a proper stream for trout of any kind. As a matter of fact, I have seen a brook absolutely dry in the month of August that was planted with trout the preceding

May, and probably it was planted in good faith by the person who applied for and obtained the trout from the State.

The State hatches a great number of fish each succeeding year, but the applications for fish more than keep pace with the increase, and the applications have to be sifted and examined carefully that the best results may be obtained by the commission in planting fish only in suitable waters, judging from the information furnished. If this information is defective or unreliable or the exact condition unknown, the result of fish planting may be disappointing.

After a pond is stocked with fish and well stocked, water, food, and temperature all being suitable, what rules can be enforced to insure that the pond will be fished with moderation in season and not at all out of season? But that is a matter for the law-makers, game wardens, and the consciences of the anglers, rather than for the fish-breeder; therefore, let us consider a little further the question of temperature of water suitable for trout. Waters that already contain trout that do well in them can be planted, as the fact that trout thrive in them is prima facie evidence that the waters are suitable for fish. In extending the range of trout, or in planting streams that have been fished out, and in which the conditions may have changed, it is safe to plant in waters that

never exceed a summer temperature of 70 degrees F. Rainbow and brown trout still thrive in waters of higher temperature than are suitable for brook trout, and brook trout will live in well aerated water above 70; at the same time water of 70.5 degrees has killed both brook and brown trout, probably because it lacked vigor, which comes from force and aeration. Trout grow little, if any, when in water below 40 degrees, and to be at their best they must have, during a portion of the year, water that ranges from 62 to 70 degrees, as this temperature hatches the insect life, which constitutes a large part of the food of the trout. While food is all important, trout must have room also, in which to grow. It is self-evident that if trout are planted in numbers to exhaust the food supply, they will not thrive; but aside from that trout must have space to be at their best, for it has been demonstrated that a given number of trout in a certain number of cubic feet of water will do better than the same number of trout in half the quantity of water, both lots of trout being fed the same amount of food.

There are other conditions which operate against the maintenance of trout in a stream. The fish must have gravel in which to make their spawning-beds. Even with gravel but a small percentage of the eggs deposited naturally are hatched, but if deposited in

the soft bottom they may be lost entirely. Suckers are very destructive of trout spawn, but after an examination of several small Adirondack lakes, that are natural trout-waters, but from which the trout have become practically exterminated, I am of the opinion that bullheads are to be charged with the destruction, more than any other one thing, men always excepted. Bullheads have not, perhaps, the general reputation for destroying trout-spawn that the sucker has; nevertheless, they are one of the most destructive agents to be found in the water where trout exist.

Every little while it is discovered by someone that trout contain ova in the summer, and there is a demand that the open season be shortened. The last complaint of this sort that I have noticed was printed in a paper in the northern part of the State. The writer of the complaint found ripe eggs in some trout he caught in August, and he desired that the law should close the fishing on and after August 1st. This gentleman simply made the mistake that others have made, for the eggs were not ripe. If he had examined trout in June or before, he would have found spawn in the females, but it would have been undeveloped ova, the same as he found in August, except that the latter was further advanced. In this State (Mr. Cheney refers to New York, but Vermont

is equally included in his statement), brook trout spawn in October, with some variation, depending upon the water, for the colder the water the earlier they will spawn.

Trout spawn when they are "yearlings", but a yearling is more than twelve months old. All brook-trout eggs are hatched in the spring, and the period of incubation varies with the water. The eggs taken the first of October in Northern New York may be 150 days in hatching, while the eggs taken on Long Island the last of November will be only about sixty days in hatching. Say that trout are hatched on Long Island in March, during the following summer they will be fry, and in the fall they will be fingerlings, seven or eight months old. The next season they will be yearlings, and as they spawn in the fall of the second season, they will actually be twenty months old at spawning time, although from custom they are called yearlings. Consequently, a yearling brook trout at spawning time is from eighteen to twenty months of age, dating from the time it left the egg. A yearling trout may yield from 50 to 250 eggs, the eggs being one-sixth of an inch in diameter, quite different from the mustard-seed eggs which the fisherman found in the fish he caught during the summer months during the open season. A trout four inches long has been known to yield 40 ripe eggs. Many a

yearling trout in wild waters are not six inches long, and where the six-inch trout law is observed numbers of trout will spawn before they can be legally taken. If there were no six-inch trout law, it would be possible to kill the trout before they spawned once, and the stock would have to depend almost entirely upon artificial propagation, with but slight aid from natural processes. A yearling trout in one of the State rearing ponds is quite a different fish from a wild trout of the same age, for the State rears yearlings that are ten and one-half inches long. Two-year old trout may yield as many as 500 eggs, and the older fish as many as 1,500.

To maintain fair fishing, even in a trout stream, such work as the State may be able to do in the way of planting the water should be supplemented by all the fish that may come from natural reproduction, and the trout should have every possible opportunity to spawn unmolested.

Planting Trout Fry.

(From "Modern Fish Culture," by Fred Mather.)

The most satisfactory results will always be obtained by planting the fry, when they have arrived at the proper size, in suitable waters, where there is an abundance of natural food, and here their in-

stinct of self-preservation will develop the same as in fish that are hatched naturally. I write this strongly, as I have steadily opposed feeding the fish and planting in the fall as fingerlings, or the next spring as yearlings, by the State Commissions, on account of the expense being greater than the advantages. The planting of yearlings has been advocated for the past eight or ten years and many papers have been read on the subject before the American Fisheries Society. It may be possible that one yearling trout, having escaped enemies of all sizes, is as good as ten fry. Admitting this to be true, for the sake of argument, then I say plant ten fry, because it is cheaper to do so, if you are to put out a million or more for some State or Government hatchery.

In taking fry, as well as adult fish, great care must be taken of the two vital points—temperature and aeration. The temperature may be kept down by ice, or better yet, snow, for ice, if in large pieces in the cans, will crush many fish, while snow is soft; an ice tray in the top of the can is the best. As the trout exhaust the oxygen from the water more must be supplied. This is done in several ways; by using a dipper and pouring the water a foot or more through the air; by drawing off a pail full through a syphon which has a strainer of perforated tin or of cheese-

cloth in the upper end, and then pouring it back and forth in another pail a few times and returning it to the can. When the water is sloshing about on a car or wagon, have no more water in the cans than can be carried with the covers off, and they need not be worked more than once in an hour or two if the water is cool. Take extra care when standing still for an hour or more; there is then more danger of suffering.

At the place of deposit compare the temperature of the brook to that in the cans by a thermometer, and if there is a difference of *three* degrees Fahr., set the can in the brook, adding a little brook water occasionally; take an hour to this if necessary, and when you are satisfied that the fry will not be injured by the shock from a warmer or colder temperature, lower the mouth of the can and let them swim out. After all your trouble or expense you cannot afford to dump your fry in a hurry and trust to luck to their living through a shock. This is why I always prefer to send one of my own men to plant fry to having the owner of the stream come for them. No doubt millions of good strong fry have been killed by the dumping process of some unthinking or ignorant man who thought: "Here's the brook and there's the fish; dump 'em in." A man may be a very learned man and not know how to plant trout fry.

Fighting Forest Fires.

(From Report of National Conservation Commission.)

It is impracticable here to give detailed and definite instructions to cover local fire-fighting problems; on the other hand, conditions so vary that no set of rules can be given that will apply universally. Eastern and western forests differ, and there are regional differences within these two great areas. Altogether there are eight distinct areas as regards forest fires, each of the eight having peculiar features that distinguish it from the others. Those in the East include the spruce forests of the Northeast; the woodlot that is characteristic of the New England and Middle Atlantic States, and the Ohio Valley region.

The principal forest regions of the Northeast are characterized by dense stands of conifers, and by open hardwood stands with heavy undergrowth. The ground is covered, for the most part, with a thick layer of humus of "duff," which may carry fire for a long time and not show it. Forest fires in this region are most common in early spring—April and May—but are likely to occur also, though with less frequency, in the early fall—September and October. In the spring the ground is covered with a thick layer of dead leaves. With the advent of the warm sun and the south wind these become so dry that they

ignite easily and burn quickly, with a blaze fierce enough to communicate itself to the dry refuse of old cuttings and to dead trees.

Two classes of fires are recognized in this region, ground and crown fires. Where there is only a light surface fire, the most common and least expensive way is to put it out with green branches, wet sacks, or wet blankets. This method is effective if the fire is attacked early enough, and if great care is used to see that the fire is actually all out and not driven from the surface down into the duff.

Where the fire is more severe and there is plenty of water, a common method is to institute a "bucket brigade," whose members pass buckets of water from a stream to the fire line. The water is rarely used against a main fire, because there it would be largely wasted, but rather to quench numerous small blazes that are started by sparks from the big one.

Where water is unavailable, sand or earth is thrown on the small blazes. This is harder work, but is more effective, unless the earth used is composed of humus or vegetable mold. In that case it apparently smothers the fire, but eventually adds fuel to it.

The best way, however, to stop a ground fire, and often the only sure way is by trenching. This is simply digging down to the mineral soil and throwing the dirt toward the fire. This is a costly and a hard

task; to be successful is must be done so far ahead of the fire that the mineral soil can be reached before the fire gets a chance to cross over. A faster method, but not so sure, is to dig holes in a line a rod or so apart and spread the dirt along the ground between the holes. Sometimes furrows may be plowed or fire lines may be cleared ahead of an advancing fire.

Crown fires can not be attacked directly unless the fire is small and the conditions unusually favorable. The flames travel so rapidly and jump such long distances that nothing can be done, except a long way in front of them. Lines may be cleared along the edges of the fire to prevent its spread laterally. Back firing is an extreme to be made use of when all other methods fail, and then only under the direction of an experienced person. The danger, particularly when there is a wind, is that the back fire may spread and add its fury to that of the original fire. When it can not be started from and held to a fixed line and forced back toward the main fire, a modification may be adopted to burn over an extended area far ahead of the on-coming blaze, which will go out from lack of fuel when it reaches the burned-over portion. In order to minimize the danger of having the precautionary fire get beyond control, the area to be burned may be divided into small sections, and each fired separately. This plan is analogous to the dyna-

miting of blocks of buildings to stop a city conflagration, and should not be resorted to except in extreme cases where valuable property is at stake.

It has been estimated that one-third of the total stand of timber in the United States is in farmers' holdings. The woodlot is thus an important part of the forest resources of the country.

The successful protection of the woodlot from fire requires three conditions: Proper organization, efficient watching, and facilities for fighting fire. By organization of a woodlot for fire protection is meant the establishment of such a condition that fires may most easily be prevented from starting, and that fires which do start may most readily be extinguished. The measures usually practical in this woodlot organization are, first, the disposal of tops and dead brush, and, second, a construction of fire lines. A fire in leaves may be put out entirely, but if tops, old logs, and snags lie scattered about, the fire may smoulder in them for a long period and remain a constant menace after the main fire is out. It is especially desirable to prevent the accumulation of inflammable trash near roads and paths where smokers and hunters are liable to set fires.

The best fire lines for the woodlot are roads and paths. Their first purpose is to make the different parts of the woods readily accessible. In a city

the effectiveness of a fire department depends on the degree of quickness it can reach a fire. In the same way, the forest traversed by roads and paths by which an incipient fire can be reached quickly is in the best condition for protection. Roads and paths will check an ordinary fire. Many fires are absolutely stopped by a dirt road, and small fires will not cross a dirt trail. If back firing is absolutely necessary, it is best done from a road or path. An opening in the forest may be a vantage point from which to fight fires, but as a check to fire it is only slightly better than no opening unless cleared entirely of inflammable material. Ordinarily, if the roads are adapted to use as fire lines, and if there are roads or trails near those boundaries where danger exists, the woodlot is well organized.

Constant watchfulness during the danger season is absolutely necessary. A woodlot that is not watched is not protected. Usually a woodlot is in close proximity to the cultivated portion of the farm, and it involves very little additional trouble to watch for fire.

Much depends on the location of fire lines. They should not be expected ordinarily to stop a fire, but rather serve as an indispensible vantage point from which to back fire or to beat out flames which jump over. Fire lines should take advantage of topograph-

ical features and be located where fires are naturally reduced in their progress of severity. This is usually on the crests of ridges or where the brush or forest is open or the ground bare. An important consideration in all fire-line construction is to plan for the removal of all dead stubs for a distance of at least 200 feet on each side. In case of fire these stubs ignite readily, and the wind carries sparks and firebrands from the tops for long distances.

Closely associated with fire lines is the question of back firing, and plans, based on local conditions, should be made for this use of fire in fighting fire. Back firing should be resorted to only when absolutely necessary, and never save under competent supervision.

If fire should get a good start in old slashings or logging works, it might be useless to make a fight until it reaches a skid road or stream, or possibly green timber. If it can not be checked until it reaches green timber, it is best to go back far enough into the timber so that the heat and smoke will not drive out the firefighters. If there is no road or skid road in the timber where a stand can be made, and if the ground is fairly level, a trail should be cut around the head of the fire from 10 to 20 feet wide, and brush, rotten wood, moss, etc., cleaned out and piled on the side next to the fire. A back fire should then be started.

In back firing it is most essential to see that the fire does not creep or blow back across the trail. It is dangerous to back fire unless enough help is available to control it. When fire strikes the green timber it will probably burn some tree tops, but when the tops and brush along the edge of the timber have been burned, it will die down and creep in the moss and brush on the ground and it can then probably be stopped at the trail. If after the fire has died down, there are any dead snags left standing with fire near the top, they should be cut down.

Fire rushes uphill, crosses the crest of the hill slowly and is more or less checked in traveling down If the fire is running uphill, especially with the wind behind it, it may be impossible to handle it until it reaches the top. If such is the case the best place to cut the trail is just beyond the crest of the hill, where there will be less smoke and where the fire will naturally be checked in running down hill.

The fire should be watched until it is entirely out. The first fire burns above the surface of the ground, and there is apt to be fire left smouldering underneath for days. The trail should be watched as long as smoke can be seen, and as soon as it cools down what fire there is left should be dug out. Dry sand or earth is usually as effective as water (and much easier to get) when thrown on a fire. Fires burn faster in the heat

of the day and are more easily controlled at night or in the early morning.

To Prepare and Preserve Heads of Deer and Other Animals for Mounting.

Divide the skin in a circle around the neck just forward of the shoulders. Cut it open along the top, to a point between the ears, from that point make a cut to each antler. Take off the skin, being careful not to cut the eyelids, and leaving part of the lining of the nostrils and the lips. Skin out the ears. Cut away all lose flesh and cure with plenty of salt, letting it dry in a shady place before packing. Skulls of all animals are interesting and valuable. They should be entire, without broken jaws, bullet holes or broken teeth if possible. Disjoint from the neck without cutting the back of the skull. Wrap jaws so that teeth shall not be broken or lost.

Skulls with antlers may be bleached and mounted on shields, and skulls of Puma, Bear, etc., on pedestals with brass standards.

To Preserve Fish for Mounting.

The easiest method for the sportsman is simply to remove the entrails through a slit in the belly, and seal the carcass up tightly in spirits, or if the specimen is to be sent but a short distance and

mounted immediately, a *strong brine* will answer as a preservative.

In general, however, the skin should be removed, especially in the case of large fishes. To do this, make a flap of the entire skin on one side of the fish, choosing the side most injured by the gaff or lose scales. Make in incision from the back to the belly just back of the gills, along the belly to the base of the tail, and up again to the back. Raise this flap, carefully cutting the flesh way, and separating the fin from the body close under the skin. With this flap laid back, the dorsal and belly fins can be cut away from the body just under the skin, the back-bone severed close to the tail and the fleshy body lifted out, cutting it away from the head last. Then all fleshy particles should be scraped from the skin, the inside of the head cleaned, eyes removed, etc. For the more perfect mounting of the specimen, any striking colors of the various parts should be noted, and the color of the eyes. After removal, the skin should be thoroughly rubbed with salt and alum and kept in a cool place. The sooner it is shipped for mounting the better. In case of a large fish, such as a Tarpon, or large Muskallunge, it is desirable to mount only one-half longitudinally on a panel in which case the flap turned back in skinning need not be preserved. A sharp knife and a pair of scissors are necessary implements.

INDEX